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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	Case 1:14-cr-00230
)	
Plaintiff,)	
)	
v.)	Alexandria, Virginia
)	July 14, 2016
MUNA OSMAN JAMA,)	9:13 a.m.
and)	
HINDA OSMAN DHIRANE,)	
)	
Defendants.)	Day 4
)	Pages 738 - 865

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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25

I N D E X

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1 THE COURT: Good morning. Ready to proceed?

2 MR. GILLIS: Good morning, Your Honor. Yes,
3 sir.

4 THE COURT: All right. Agent Goodman, you
5 remain under oath.

6 THE WITNESS: Yes, Your Honor.

7 MR. GILLIS: Your Honor, what I'd propose to
8 do since all we've been doing with this witness is to
9 identify the exhibit and not talk about it.

10 THE COURT: All right.

11 MR. GILLIS: To significantly shorten things
12 up, what I propose to do is to move into evidence all
13 the calls and chats that have been identified as
14 government exhibits.

15 THE COURT: All right.

16 MR. GILLIS: I can give those to you now,
17 sir, or --

18 THE COURT: Yes. Did you want to direct my
19 attention to some specific portion of those exhibits?

20 MR. GILLIS: Your Honor, I can do that in
21 closing depending upon the amount -- actually, could
22 you give us an idea, given that this is such a
23 document-intensive case, how much time you'll allow us
24 for --

25 THE COURT: What I would like to do is have

1 closing but also give both sides time to submit written
2 summations of their positions. I think the case
3 requires that in terms of the evidence.

4 MR. GILLIS: Thank you, Your Honor.

5 So the exhibits that I would move into
6 evidence would be 49, 50, 51, 52, 53, 54, 55, 57, 58,
7 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73,
8 75, 76, 77, 80, 83, 85, 87, 89, 91, 92, 93, 95, 96, 97,
9 98, 104, 105A, 105B, 106, 107, 108, 109, 112, 113, 114,
10 115, 117, 118, 119, 120, 123, 125, 128, 129, 132, 133,
11 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145,
12 150, 172 -- and although this is a poem, Your Honor, we
13 submit it pursuant to a stipulation as to the accuracy
14 of the translation of the poems, which were written by
15 Defendant Dhirane.

16 Your Honor, that's my understanding of all of
17 the exhibits that were calls or chats that had not yet
18 been moved in. I will confirm with your court staff to
19 make sure that we have them all in, and, if necessary,
20 I'll add those to the record.

21 Yes. One moment, Your Honor.

22 THE COURT: Yes.

23 MS. MINTER: The Court's indulgence, Your
24 Honor.

25 MR. GILLIS: The poems were 174.

1 THE COURT: Exhibit 174?

2 MR. GILLIS: Yes, sir.

3 THE COURT: You mentioned 172 as well?

4 MS. MINTER: I believe that's a call, Your
5 Honor.

6 MR. GILLIS: Yes, sir, that's a call. The
7 only one that's not calls or chats would be 174, but we
8 have a stipulation as to that.

9 THE COURT: All right. Do you want to state
10 your objections for the record on this?

11 MS. MINTER: Your Honor, perhaps after the
12 break we could be given a moment to go through the
13 exhibits and reassess.

14 THE COURT: That's fine. I'll conditionally
15 admit those subject to your review and objections.

16 MS. MINTER: Yes, Your Honor.

17 THE COURT: All right.

18 MR. GILLIS: Your Honor, what I would propose
19 is to have the agent refer to a few transcripts that
20 are linked together, and I believe it would be helpful
21 to the Court to have the agent explain the connection.

22 THE COURT: That's fine.

23 MR. GILLIS: Then a couple of the substantive
24 count transactions, how those were arrived at just as
25 an illustration of the evidence. I expect that that's

Goodman - Direct by Mr. Gillis

1 not going to take very long, Your Honor.

2 THE COURT: All right.

3 FURTHER DIRECT EXAMINATION

4 BY MR. GILLIS:

5 Q Good morning, Agent Goodman.

6 A Good morning.

7 THE WITNESS: Good morning, Your Honor,
8 members of the Court.

9 BY MR. GILLIS:

10 Q First of all, would you take a look at
11 Government's Exhibit J.

12 THE COURT: Is there a J?

13 MR. GILLIS: Yes, Your Honor. Your Honor,
14 it's the jetlag. I'm afraid that --

15 THE COURT: 4J, is that what it is?

16 MR. GILLIS: 4J, yes. Thank you, Your Honor.

17 THE CLERK: I don't have a 4J on my list.

18 MR. GILLIS: It's a new exhibit that I have
19 given to counsel today. This was produced in
20 connection with discovery, but we did not add it. It
21 was omitted from our government's exhibit list by an
22 oversight.

23 THE CLERK: Thanks.

24 BY MR. GILLIS:

25 Q Could you take a look at Government's Exhibit 4J.

Goodman - Direct by Mr. Gillis

1 A Yes, sir.

2 Q Would you tell us what that is.

3 A These are Ms. Dhirane's notes during the
4 post-Mirandized interview.

5 Q Okay. Some of those notes are in your
6 handwriting. Am I right?

7 A They are, yes.

8 Q Can you indicate for us what parts are in your
9 handwriting?

10 A So on the first page --

11 Q Yes, sir.

12 A -- 00434, towards the bottom right-hand corner,
13 there is a drawn outline of a square with several phone
14 numbers inside that square starting at the top with the
15 word "magicJack" and then several phone numbers.

16 Q Okay.

17 A Then I denote at the bottom of that square that
18 it's written by SA Goodman, myself.

19 Q Okay.

20 A On the second page, 00435, there's another outline
21 of a square at the bottom of the page. Again, I
22 denoted it's my writing, written by SA Goodman.

23 Q Okay. How about the part at the top there where
24 it says Dhirane Notes 07-23-14?

25 A Yes, sir, that is my handwriting as well.

Goodman - Direct by Mr. Gillis

1 Q The rest of the document, whose handwriting is
2 that?

3 A So there's two. There is another outline of a --

4 Q I'm sorry. With respect to Government's
5 Exhibit 4J?

6 A Yes, sir.

7 THE COURT: Do you have a copy for the Court?

8 MR. GILLIS: I beg your pardon, Your Honor.
9 I thought it was given up to the Court, but let me give
10 one to Mr. Burns.

11 THE COURT: Oh, I have it. I'm sorry. We do
12 have it.

13 Thank you, Mr. Farlow.

14 A So on that first page --

15 Q Let me ask this first of all.

16 A Yes, sir.

17 Q Apart from those that you've already indicated as
18 being in your handwriting, is Defendant Dhirane's
19 handwriting on this document?

20 A Yes, sir.

21 Q Apart from Defendant Dhirane's handwriting, is
22 there someone else's handwriting on this document?

23 A Yes, sir.

24 Q Are you able to tell us which handwriting is not
25 in the defendant's handwriting?

Goodman - Direct by Mr. Gillis

1 A Yes, sir.

2 Q All right. So if you would, tell us what are the
3 parts that are not -- first of all, in whose
4 handwriting is it?

5 A So it's both in the female special agent that was
6 in the room with me and my handwriting.

7 Q All right. Let me just be clear. So we've got
8 the two boxes that you've indicated and the Dhirane
9 notes and the date that are in your handwriting?

10 A Yes, sir. There's also one other that I failed to
11 mention.

12 Q Okay. So mention that now if you would.

13 A So at the top right corner where it says
14 clarifications by SA Gryz, Special Agent Gryz is the
15 female agent. I wrote clarifications by SA Gryz. I
16 wrote those.

17 Q That's the part that's got a squiggly circle
18 around it?

19 A Correct.

20 Q All right. Apart from those things that you've
21 just identified, is there anyone else's handwriting on
22 this besides the defendant's?

23 A No, sir.

24 Q Okay. So tell us what this is, if you would.

25 A So as I was interviewing Ms. Dhirane and she

Goodman - Direct by Mr. Gillis

1 provided names and phone numbers, due to the phonetic
2 spelling, I asked her to write down the spellings of
3 certain names and phone numbers.

4 Q Okay. Let me ask this: Are there any parts of
5 this document that are related to the defendant? In
6 other words, is there anything here that the defendant
7 used as some sort of means of communication?

8 A That she identified as her means of communication,
9 that is correct.

10 Q Well, either that or a user -- something that's
11 identified with her as opposed to somebody else?

12 A Yes, sir.

13 Q Okay. What's that?

14 A The moniker Nicmatu Rabbi.

15 Q Okay.

16 A The e-mail address hindadhirane@yahoo.com.

17 Q Okay.

18 A Umusafaa@gmail.com.

19 Q Okay.

20 A The Bintu Osman, the bottom right.

21 Q Okay.

22 A I believe that khadiija13, but I'd have to refer
23 to my interview notes. But I believe that as well.

24 Q Well, would it refresh your memory to refer to
25 your interview notes?

Goodman - Direct by Mr. Gillis

1 A It would be helpful, yes, sir.

2 Q I'm going to show you your 302 of the defendant,
3 dated July 23, 2014, that was previously provided to
4 the defense counsel.

5 MR. GILLIS: It's Bates number 17643, Your
6 Honor.

7 THE COURT: Okay. You can provide that to
8 the witness for the purposes of refreshing his
9 recollection.

10 What is the pending question?

11 A Sorry. Khadiija, sir. I recall it. I just
12 didn't recall the context. Based on my notes and
13 recollection --

14 Q All right. Is your memory refreshed at this point
15 as to whether that ID under Bintu Osman, whether that's
16 the defendant's? Have you looked at that document?

17 A Yes, sir.

18 Q Is your memory now refreshed whether it is or it's
19 not?

20 A Yes, sir.

21 Q Is your memory refreshed?

22 A Yes, sir.

23 Q All right. Would you hand that document back to
24 Mr. Burns, please.

25 All right. Now having your memory refreshed, can

Goodman - Direct by Mr. Gillis

1 you tell us whether that user ID was one that she
2 identified as belonging to her?

3 A No. It was the one to the left of that, the
4 Khadiija to the left at the bottom.

5 Q Khadiija?

6 A Yes, sir.

7 MR. GILLIS: Your Honor, I'd move in, if I
8 haven't already, Government's Exhibit 4J.

9 THE COURT: Any objection?

10 MR. YAMAMOTO: No objection.

11 THE COURT: Without objection, 4J is
12 admitted.

13 BY MR. GILLIS:

14 Q Would you take a look, please, at Government's
15 Exhibit 2.

16 Can you tell us what that is?

17 A This is a visual representation of what we have
18 identified as the participants in the conspiracy here.

19 Q Are all of the people identified there and the
20 user names underneath, are they identified or mentioned
21 in the calls, chats, or in one of the summaries that
22 have been admitted into evidence?

23 A Yes, sir.

24 MR. GILLIS: Your Honor, I'd move in
25 Government's Exhibit 2.

Goodman - Direct by Mr. Gillis

1 THE COURT: Any objection?

2 MS. MINTER: Your Honor, we don't object to
3 it as a demonstrative of what the government believes
4 the evidence shows. It can't speak for itself.

5 THE COURT: The Court will admit it as a
6 demonstrative exhibit.

7 MR. GILLIS: Thank you, Your Honor.

8 BY MR. GILLIS:

9 Q Did you prepare a summary, a chart that shows
10 articles, news media articles that one or the other of
11 the defendants accessed as demonstrated by the
12 court-authorized surveillance?

13 A I contributed to its formation, yes, sir.

14 Q You're familiar with it?

15 A Yes, sir.

16 Q You've assured yourself of its accuracy?

17 A Yes, sir, I did.

18 Q I'd ask you to look at Government's Exhibit 8,
19 please.

20 Is Government's Exhibit 8 the news summary that
21 you prepared?

22 And I'll point out that because of the rule on
23 witnesses, you've not been told that two of the entries
24 have been deleted from the exhibit that was previously
25 in there.

Goodman - Direct by Mr. Gillis

1 MR. GILLIS: With the Court's permission,
2 I'll point them out to the witness.

3 THE COURT: All right.

4 BY MR. GILLIS:

5 Q There were two open source Internet articles,
6 Government's Exhibit Y and Government's Exhibit 8-A
7 that have been -- those exhibits have been withdrawn
8 and --

9 THE COURT: So it would be --

10 MR. GILLIS: Well, the old exhibit that the
11 witness is familiar with was Government's Exhibit 8,
12 but it contained two entries referring to open source
13 Internet articles.

14 THE COURT: Is there a number for the
15 exhibit?

16 MR. GILLIS: Yes. It's 8, but it's been --

17 THE COURT: Exhibit 8. I thought you said A.
18 I'm sorry.

19 MR. GILLIS: I beg your pardon. It's
20 Exhibit 8. It's the midwestern accent, Your Honor.

21 THE COURT: No. That's all right.

22 MR. GILLIS: So from that exhibit, we've
23 deleted two articles that were open source articles,
24 and I believe I've just identified those two.

25 THE COURT: A and Y?

Goodman - Direct by Mr. Gillis

1 MR. GILLIS: That's fine. I'm sorry for the
2 confusion.

3 Your Honor, we can identify the new exhibit
4 as 8A if that would be convenient. Oh, there's an 8A
5 already.

6 MR. YAMAMOTO: Your Honor, we just need to
7 know which one he's deleting out.

8 THE COURT: Yes. Which ones have you deleted
9 within 8?

10 MR. GILLIS: Yes, Your Honor. All right. So
11 on page 1885, the second page of the document, we have
12 deleted the last and the third-from-last columns, which
13 refer to -- actually, I'm sorry. I beg your pardon,
14 Your Honor. If I may begin again.

15 THE COURT: That's fine.

16 MR. GILLIS: On the third page, 18886, we
17 have deleted the last column, and we have deleted the
18 third row -- I'm sorry, thank you -- the last row and
19 the third-from-last row. Those refer to open source
20 Internet media. They were marked as Government's
21 Exhibit 8Y1 and 8Y for the third-to-last column, and
22 8A-A for the last column. So those exhibits have been
23 withdrawn, and those two rows have been deleted from --

24 THE COURT: All right. So on 18886, you're
25 saying the last --

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1 MR. GILLIS: The last row, Your Honor.

2 THE COURT: The last row where it says
3 Puntland?

4 MR. GILLIS: I'm sorry. This would be on the
5 third page of -- Your Honor, on the -- I'm sorry for
6 the confusion, Your Honor. On the exhibit that you now
7 have, that's the new government's exhibit.

8 THE COURT: I see. Mr. Farlow has just given
9 me the old exhibit, and I see what you've done.

10 MR. GILLIS: Okay. I'm sorry for the
11 confusion, Your Honor. All right.

12 THE COURT: So do we have, Ms. Allen, the new
13 Exhibit 8?

14 MR. YAMAMOTO: We do, Your Honor.

15 THE COURT: All right. We have it. That's
16 fine. Thank you.

17 MR. GILLIS: Thank you, Your Honor.

18 BY MR. GILLIS:

19 Q So you now have the revised Government's Exhibit 8
20 that had simply the deletion of those two rows. Apart
21 from that, you've assured yourself that all of the
22 other columns and all the other information was
23 accurate; is that right?

24 A Yes, sir, that's true.

25 Q Okay. So if you would, tell us to what these

Goodman - Direct by Mr. Gillis

1 articles pertain in general.

2 A In general, these pertain to al-Shabaab movements,
3 activities.

4 Q Are there al-Shabaab figures mentioned as well?

5 A Yes. It's al-Shabaab associates, members,
6 leaders, activities.

7 Q In some cases, al-Shabaab enemies or what are
8 considered al-Shabaab enemies?

9 A Yes.

10 MR. GILLIS: Your Honor, I'd move
11 Government's Exhibit 8.

12 THE COURT: Any objection?

13 MS. MINTER: Your Honor, there's no
14 fundamental objection, I suppose, to the chart because
15 the chart summarizes the government's exhibits.

16 The Court will recall, though, that we had
17 lodged an objection, and we continue to object to the
18 relevance of open source articles. But anything that
19 is not open source, Your Honor, I believe has been
20 stipulated to.

21 THE COURT: All right. The Court, over
22 objection, will admit Exhibit 8.

23 BY MR. GILLIS:

24 Q If you would, look at Government's Exhibit 8A --
25 well, actually, let's shorten this up. So in the

Goodman - Direct by Mr. Gillis

1 second column, what does that refer to?

2 A The facility of user in which it was collected on.

3 Q So in that instance, for example, Defendant Jama
4 accessed that news article, and you captured that
5 through the court-authorized surveillance on one of her
6 facilities?

7 A That is correct.

8 Q Then with respect to that column showing Defendant
9 Dhirane, the same is true?

10 A It's from her facility, correct.

11 Q All right. So the next column refers to the date
12 of the article. What is that?

13 A It's the actual date that the article was written
14 or at least posted online.

15 Q Okay. In the date accessed on the Internet, what
16 does that refer to?

17 A This is the date that it was actually accessed
18 through the broadband. So the date that the user
19 viewed that article during the court-authorized
20 electronic surveillance.

21 Q The next column refers to the government's exhibit
22 that is the English translation of the Internet article
23 that the defendants accessed?

24 A That is correct, sir.

25 Q Then the last column there, what does that refer

Goodman - Direct by Mr. Gillis

1 to?

2 A These are the transcripts of the chats and/or
3 phone calls that are associated to that article. They
4 are speaking about it in some context.

5 Q They are speaking about it in some context?

6 A Yes.

7 MR. GILLIS: Your Honor, I would move into
8 evidence the articles that have not yet been moved in,
9 which would be Government's Exhibits 8A-1, 8D-1, 8O-1,
10 8P-1, 8R-1, 8T-1, 8U-1, 8V-1 only because it's not
11 clear from our notes whether that particular exhibit
12 has been introduced. If it has, it's already in, Your
13 Honor. Those are the English translation of the
14 articles.

15 THE COURT: All right. Any objection?

16 MS. MINTER: Your Honor, I don't anticipate
17 any objection. If we could review them at the break,
18 that would be helpful.

19 THE COURT: The Court will conditionally
20 admit those subject to giving you an opportunity to
21 assert your objections.

22 MS. MINTER: Thank you, Your Honor.

23 If I could revise our position with respect
24 to Government's Exhibit 8, I would just say that we
25 would object to the conclusory statements in column 2.

Goodman - Direct by Mr. Gillis

1 THE COURT: I understand. The Court has
2 admitted Exhibit 8 understanding the basis for the
3 second column.

4 BY MR. GILLIS:

5 Q Agent Goodman, would you please look at
6 Government's Exhibit 119, please. If you would, look
7 at pages 1 through 3 of that document.

8 Have you reviewed those?

9 A Yes, sir.

10 Q Then, if you would, look at Government's
11 Exhibit 118 -- I'm sorry.

12 In Government's Exhibit 119, who are the
13 participants in that call or in that chat?

14 A This is a phone conversation between Hinda Osman
15 Dhirane and Ismahaan Cabdi Cilmi.

16 Q Who is Ismahaan Cabdi Cilmi?

17 A She's one of the group of 15.

18 Q Do you know her username?

19 A Yeah. I believe it was Khuluud.

20 Q If you would, then, look at Government's
21 Exhibit 118 and focus on pages 1 and 2 and 3.

22 Have you had a chance to review those?

23 A Yes, sir. Sorry. One moment.

24 Yes, sir.

25 Q If you would, could you summarize -- well, first

Goodman - Direct by Mr. Gillis

1 let me, if I didn't, ask you who the participants are
2 in 118.

3 A This is Hinda Osman Dhirane and Hodan Ismail
4 Hassan.

5 Q All right. And if you would, please summarize
6 what's going on here with Exhibits 119 and 118.

7 A So Abu Kawsar had contacted --

8 Q Before you do that, I'm sorry.

9 MR. GILLIS: They aren't in evidence.
10 Technically, Your Honor, they should be first -- well,
11 I take that back. They are in evidence. Thank you.

12 BY MR. GILLIS:

13 Q If you would, please summarize what's going on
14 there with those two conversations.

15 A Yes. Abu Kawsar contacted Ms. Dhirane and was
16 asking for money for computers. They had had to move
17 their location from where they were at to the
18 interior --

19 MR. YAMAMOTO: My objection is this is his
20 interpretation of what's being said. It's not
21 necessarily what's being said.

22 THE COURT: I understand. I'll hear this as
23 an example of what the government is offering.

24 Go ahead.

25 MR. GILLIS: Actually, Your Honor, I would

Goodman - Direct by Mr. Gillis

1 also offer it as a summary under Federal Rule of
2 Evidence 1008.

3 THE COURT: His testimony?

4 MR. GILLIS: With regard to these two
5 exhibits, I believe the rules permit him to summarize.

6 THE COURT: I'm not going to let it in as a
7 summary. I will hear the agent's testimony concerning
8 how he reads what is discussed in here.

9 BY MR. GILLIS:

10 Q Please continue.

11 A In the first column between Ms. Dhirane and
12 Ms. Hassan, Dhirane is relaying how Abu Kawsar had
13 contacted her about needing computers because they had
14 to move and they lost five of their computers. He's
15 asking for \$1,000.

16 Ms. Dhirane in the second call is relaying this to
17 Ms. Ismahaan, how Abu Kawsar had contacted about asking
18 for money for the computers. Ms. Dhirane had stated
19 that she can only pay \$100. She would have to find the
20 other \$200 from another source. When he asked for
21 \$1,000, she said, No way. I can come up with some and
22 agreed upon \$100.

23 During that, she's relaying how she went to her
24 husband and had to get the money from her husband.
25 Then she's stating she's going to have to send it to an

Goodman - Direct by Mr. Gillis

1 individual in Qoryoley, Somalia.

2 Q Do you recall from Mr. Bryden's testimony who Abu
3 Kowthar is?

4 A Yes. He was the ISDAC administrator.

5 Q Do you recall from Mr. Bryden's testimony what the
6 *Somali Memo* was?

7 A The *Somali Memo* was an al-Shabaab-affiliated
8 website.

9 Q If you focus your attention on the bottom of
10 page 1 of Exhibit 113 and --

11 A I'm sorry. Exhibit 113, sir?

12 Q Pardon me. Exhibit 119, page 1.

13 A Yes, sir.

14 Q Do the computers relate to that *Somali Memo*?

15 A Yes. Ms. Dhirane is relating to Ms. Ismahaan that
16 Abu Kawsar had asked for the money for the computers
17 for *Somali Memo*.

18 MS. MINTER: Your Honor, I would object to
19 speculation, the lack of foundation, and the document
20 is in evidence.

21 THE COURT: I understand. The Court is going
22 to listen to the testimony and give it such weight as
23 it deems appropriate.

24 Let me ask you: Where on page 1 are you
25 summarizing?

Goodman - Direct by Mr. Gillis

1 THE WITNESS: So on Government's Exhibit 119.

2 THE COURT: What do you see as referring to
3 the *Somali Memo*.

4 THE WITNESS: So on 18351, the third --

5 THE COURT: I see.

6 THE WITNESS: -- user up.

7 THE COURT: All right.

8 BY MR. GILLIS:

9 Q Would you turn to Government's Exhibit 11, please.

10 MR. GILLIS: This is in evidence. It's the
11 summary of the hawala transactions for Defendant
12 Dhirane.

13 BY MR. GILLIS:

14 Q Would you remind us when the conversation on 118
15 took place between Dhirane and Hodan.

16 A It occurred on January 23, 2013.

17 Q And would you remind us -- actually, if you would.
18 Look at the second page of that. Would you tell us
19 where the payment was going to be going.

20 A Qoryoley.

21 Q That's a transliteration. Are there other
22 spellings of that city?

23 A There are.

24 Q Ms. Dhirane says that she would instruct her
25 husband to send the money the next day?

Goodman - Direct by Mr. Gillis

1 A Correct.

2 THE COURT: Is this 118 or 119?

3 THE WITNESS: Exhibit 118, sir. Sorry.

4 THE COURT: Where is the reference to
5 Qoryoley? I see it. All right.

6 BY MR. GILLIS:

7 Q Would you look, please, for the entry at
8 January 23, 2013.

9 A On Exhibit 11?

10 Q Yes, sir.

11 A Yes, sir.

12 Q Do you see that?

13 A I do, sir.

14 Q What's the amount of that payment?

15 A \$100.

16 Q Where is it being sent?

17 A Qoryoley.

18 Q That's an alternative spelling for the Qoryoley
19 that appears in Exhibit 118?

20 A Yes, sir, it is.

21 Q Who is the recipient of this \$100?

22 A Daahir Abdi, D-A-A-H-I-R, Abdi, A-B-D-I.

23 Q Did you ask the defendant about Daahir Abdi during
24 your interview of her?

25 A I did, yes, sir.

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1 Q Could you tell us what she had to say about this
2 person.

3 A She stated she had sent money to Daahir Abdi.

4 Q Do you recall, Agent?

5 A I believe I have it, but I would like to see the
6 notes just to --

7 Q Would it refresh your memory?

8 A Yes, sir, it would.

9 MR. GILLIS: If I could ask Mr. Burns to hand
10 you the same 302.

11 THE WITNESS: I apologize, Your Honor. One
12 moment.

13 THE COURT: All right.

14 A Yes, sir.

15 Q Having reviewed your 302, is your memory now
16 refreshed?

17 A Yes, sir, it is.

18 Q So can you tell us what the defendant told you
19 about that person, Daahir Abdi?

20 A She stated she remembered hearing Daahir Abdi in
21 Paltalk asking for money for the poor people in
22 Somalia, and that's why she sent that money.

23 Q Would you turn with me, please, to Government's
24 Exhibit 44. If I could direct your attention to the
25 fourth page of that document.

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1 A Yes, sir.

2 Q What does that refer to? What is that
3 conversation 44 about?

4 A This is a phone conversation between Ms. Muna
5 Osman Jama and Hinda Osman Dhirane --

6 MS. MINTER: Same objection, Your Honor.

7 THE COURT: Overruled.

8 A -- in which Ms. Jama is referring to the other
9 side, the Kenya side, and refers to Umu Camaar -- as we
10 know as Fardowsa Jama Mohamed -- talking about the
11 money that reaches her and that she rents the homes
12 that are run by the infidels and collecting the money
13 for the month.

14 Q How many homes does Jama say they're renting?

15 THE COURT: Are you on page 4?

16 MR. GILLIS: I beg your pardon. Page 4 of
17 Exhibit 44, Your Honor.

18 THE COURT: I see. Yes. All right.

19 BY MR. GILLIS:

20 Q How many homes does Jama say Umu Camaar in Kenya
21 was renting?

22 A Two homes.

23 Q Could you take a look, please, at Government's
24 Exhibit 170 -- I beg your pardon -- 170.

25 Who are the participants in that conversation?

Goodman -- Voir Dire by Ms. Minter

1 A This is Ms. Hinda Osman Dhirane and Ms. Farhia
2 Hassan.

3 Q Would you focus, please, on pages 6 -- US triple
4 or quadruple 0-6 and 7, please.

5 THE COURT: Exhibit 170 may not have been
6 admitted. You're offering it?

7 MR. GILLIS: Yes, Your Honor.

8 THE COURT: All right. Subject to the same
9 objections asserted, the Court will admit 170.

10 MS. MINTER: Your Honor, could I clarify one
11 point if the witness has the exhibit?

12 THE COURT: Yes.

13 MS. MINTER: Or perhaps the government would
14 stipulate. But if I could just very briefly.

15 VOIR DIRE EXAMINATION

16 BY MS. MINTER:

17 Q Agent Goodman, you have Exhibit 170 in front of
18 you?

19 A Yes, ma'am, I do.

20 Q The first line on your copy, is that followed by
21 the name Farhia?

22 A The date and times?

23 Q Yes, indicated after the date and time.

24 A Yes. It does not say Farhia Hassan.

25 Q I'm sorry. It does or does not?

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1 A It does not.

2 MS. MINTER: Okay. Your Honor, I would just
3 say that in the exhibits that were presented to us, our
4 understanding is the government added that for clarity
5 of their belief of the speaker, but I would like it to
6 be clear from the record that's not part of the
7 original exhibit as captured.

8 THE COURT: All right. The Court will admit
9 the exhibit with that understanding and qualification.

10 FURTHER DIRECT EXAMINATION

11 BY MR. GILLIS:

12 Q That identification comes from the summary chart
13 that we talked about earlier with respect to the
14 facilities and the identification of the users?

15 A Correct, yes, sir.

16 MR. GILLIS: Your Honor, Mr. Yamamoto has
17 told me that he does not have the pages after Bates
18 number --

19 MR. YAMAMOTO: I've got them now.

20 MR. GILLIS: Okay. I just wanted to confirm
21 that the Court and counsel for Ms. Jama had those
22 pages.

23 THE COURT: Of Exhibit 170?

24 MR. GILLIS: Yes, Your Honor.

25 THE COURT: Yes. I have 170, Bates Numbers

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1 01 through 010.

2 MR. GILLIS: Thank you, Your Honor. That's
3 the complete exhibit.

4 THE COURT: All right.

5 BY MR. GILLIS:

6 Q So with respect to 170, have you focused on
7 pages 6 and 7?

8 A Yes, sir.

9 Q Then if you would, look at Government's
10 Exhibit 171 and focus in particular on pages 4 through
11 6.

12 A Yes, sir.

13 Q Could you summarize for us, please, what is going
14 on in those two transcripts.

15 Can I ask you first: Who are the participants in
16 the second conversation?

17 A So in the second conversation, it is Hinda Osman
18 Dhirane and Hodan Ishmail Hassan occurring the day
19 after the chat conversation referenced previously.

20 Q Okay. So tell us what's going on in those two
21 conversations, please.

22 A So on the first chat conversation between
23 Ms. Dhirane and Ms. Farhia Hassan in Holland,
24 Ms. Farhia Hassan is informing Ms. Dhirane: I found
25 two other women who can contribute. I was going to

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1 give them the name of the individual to send it to so
2 they don't think that I'm taking the money.

3 Ms. Dhirane says, Don't do that because she's
4 known. Don't do that.

5 Ms. Farhia says, Well, I'll tell them it's for
6 orphans.

7 Ms. Dhirane says, No. It's best just to tell them
8 that it's just for the people for food.

9 The very next day on the second call, 171, you had
10 Ms. Dhirane explaining this conversation to Ms. Hodan
11 Ishmail Hassan. She relates the previous conversation
12 to Ms. Hodan Hassan in Somaliland.

13 Ms. Hodan Hassan states, No. It's best not to
14 tell them it's for orphans. If they come to Somalia,
15 they're going to want to see what orphans we're
16 contributing to, and that will get us in trouble. It's
17 best to say --

18 In Dhirane's words, it's best to make them believe
19 about a school.

20 Ms. Hodan proceeds to say, Yes, this is good. We
21 can say about a school, and then we're contributing to
22 many people. Therefore, there's no specific entity
23 that we can show them who we're contributing to and
24 they wouldn't trip us up.

25 Q In the end, if you turn to page 8 of Government's

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1 Exhibit 171, in particular, toward the middle there
2 where Defendant Dhirane says, No, forget about it, what
3 do Dhirane and Hodan Ishmail Hassan decide to do about
4 these two women who were going to offer money for
5 orphans?

6 A Because at that time, they were only contributing
7 \$10 each. They felt like this would be too much
8 trouble for those women. So they decided not to use
9 those women.

10 Q Well, too much trouble in what sense?

11 A That the questions that could be raised by them,
12 the amount of explanation they would have to give and
13 they could be called upon because those women do have
14 access to Hargeysa, that in and of itself was too much
15 trouble for the amount of money they were going to
16 give.

17 Q If you would, please turn to Exhibit 105. If you
18 would focus in particular, first, on pages 817 to 818
19 and then pages -- pardon me -- 826 and 827. So pages
20 817 to 818 and then pages 826 to 827.

21 Have you reviewed those?

22 A Yes, sir.

23 Q If you'd look, please, at Government's
24 Exhibit 105A, just page 1, would you let me know when
25 you've reviewed that.

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1 A Yes, sir. I've reviewed it.

2 Q Then if you'd turn back to 105 and look at
3 pages 834 through 836 and beginning towards the bottom
4 where it says, My husband called me.

5 While we're at it, can you tell us in the first --
6 in 105 that we looked at first, who are the
7 communicants there?

8 A So this is an online chat communication between
9 Muna Osman Jama and Fardowsa Jama Mohamed on
10 December 31.

11 Q In 105A, who are the communicants there?

12 A This is an audio conversation on the telephone, a
13 telephone conversation between Muna Osman Jama and her
14 husband.

15 Q That's on the same day?

16 A That's also on December 31, 2012, yes.

17 Q Then, if you would, turn back with me to
18 Government's Exhibit 105, pages 834 and 836, 834
19 through 836.

20 A Yes, sir.

21 Q You've reviewed those three pages?

22 A Yes, sir, I have.

23 Q Okay. Would you summarize for the Court what's
24 going on in these two conversations?

25 MS. MINTER: Your Honor, I'd just ask the

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1 Court to note our continuing objection.

2 THE COURT: All right. Overruled.

3 THE WITNESS: So Ms. Jama was unable to send
4 the money to Ms. Fardowsa Jama Mohamed, the hawala, in
5 this case Dahabshiil, had told her that she could not
6 send the money, that the name was on a list according
7 to Ms. Jama. Ms. Jama's relating this to Ms. Fardowsa
8 Jama Mohamed saying, I could not send you the money.
9 They said it was on a list.

10 Ms. Fardowsa asks --

11 THE COURT: This is between 834 and 836?

12 MR. GILLIS: This is, Your Honor, 817 and 18
13 I believe he's referring to now.

14 THE COURT: All right.

15 BY MR. GILLIS:

16 Q If you would, continue with your summary, Agent.

17 A Ms. Fardowsa Jama is asking was it the American
18 side or the Kenya side. They're not sure.

19 Q Rather than the side, is it the government that
20 she mentions, the American or the Kenyan government?

21 A Yes, sir, that is correct, sir.

22 Ms. Jama relates to Ms. Fardowsa how her husband
23 had told her to stay away from Paltalk, that her mouth
24 is what's causing the trouble. That's in this 105.

25 Q So 105A takes place between those two

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1 communications between Jama and Fardowsa; is that
2 right?

3 A That's correct.

4 Q So she first has the conversation that you just
5 related with Fardowsa --

6 A Correct.

7 Q -- about whether it's the Kenyan or the American
8 government list that she might be on?

9 A Correct.

10 So back to Exhibit 105 between Ms. Muna Osman Jama
11 and Fardowsa Jama Mohamed, Ms. Fardowsa Jama Mohamed
12 tells her -- or Ms. Muna Osman Jama says, I'll state
13 that it was for my aunt who was in hardship.

14 Fardowsa Jama Mohamed concurs and states, I will
15 say that I was your aunt in hardship but
16 nevertheless --

17 Q That's on page 826 of 105?

18 A It's on page 826. Sorry.

19 And then just to further that, going into 827 at
20 the top where Ms. Fardowsa states she will claim that
21 she was in hardship and the money was collected for
22 her.

23 Q And then the call with the husband occurs; is that
24 right?

25 A In the midst of this, yes.

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1 Q What does she say to the husband?

2 A She says, I didn't do anything wrong.

3 She says, I was helping my aunt's child with
4 school expenses. That is it. There's nothing else I
5 was doing. If they accuse me of not working, then I'll
6 just state that my husband was working.

7 Q Okay. Then after that, she comes back to Fardowsa
8 and tells her that she's received a call from her
9 husband?

10 A Yes.

11 Q What then do Fardowsa and the defendant discuss?

12 A She relates how her husband told her to stay away
13 from Paltalk.

14 THE COURT: Which exhibit is this now?

15 THE WITNESS: I'm sorry. Back into 105,
16 that's a reference to Exhibit 105A at the top where he
17 says, Stay away from your computer and the Paltalk.

18 THE COURT: What page?

19 THE WITNESS: On the first page of 105A,
20 00481.

21 BY MR. GILLIS:

22 Q No. I'm sorry. I think the Court was asking with
23 respect to the chat. Where is it that refers to the
24 husband having called?

25 A I apologize.

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1 Q In any event, Agent, during this conversation,
2 this communication between Jama and Fardowsa, the
3 husband calls?

4 A Correct.

5 Q From those exhibits, from the two exhibits, do
6 they show the time stamp that the conversation took
7 place?

8 A They do, yes, sir.

9 Q So after the conversation involving the husband,
10 what do they then talk about on 126 through 127 or 8
11 rather -- yes, 27.

12 THE COURT: Of 105?

13 THE WITNESS: Of 105, yes, sir.

14 MR. GILLIS: Of 105, yes, Your Honor.

15 BY MR. GILLIS:

16 Q Actually, I'm sorry. If you'd look at
17 Government's Exhibit -- if you'd look at page 834
18 through 836.

19 A Yes, sir. At the bottom of 834, sir, is where
20 Ms. Jama relates, My husband called me and said stay
21 away from Paltalk.

22 Q All right. And I'm sorry. So then the
23 conversation continues after the call from the husband?

24 A That's correct.

25 Q So have you had a chance to review 834 through

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1 836?

2 A Yes, I have, sir.

3 Q So could you summarize what the two women
4 discussed after the husband's call?

5 A So Ms. Fardowsa Jama Mohamed proceeds to tell
6 Ms. Muna Osman Jama, Delete the names, delete all of
7 the stuff. They can't do anything to you but delete
8 any evidence.

9 This is on page 835, sir.

10 THE COURT: I see.

11 A Proceeding on to 836, Ms. Muna Osman Jama relays
12 her concerns that what if they're monitoring me, the
13 government? What if they captured the Sheikh Jama
14 Abdulsalam and the brothers?

15 Ms. Fardowsa Jama Mohamed proceeds to state in the
16 middle there of 836, The infidels cannot do anything to
17 you. We trust in God. But remove from your home
18 anything that could be evidence.

19 Q If you would, look at the last line of 835 and
20 continue on to the middle there of 836.

21 A Yes, sir. Right after Ms. Fardowsa Jama Mohamed
22 tells Muna Osman Jama to delete the evidence, Muna
23 Osman Jama says, The money I sent before, God only
24 knows if they were monitoring me to Sheikh Jama
25 Abdulsalam and other brothers.

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1 THE COURT: Where is that?

2 THE WITNESS: It starts on the bottom of
3 page 835, sir, of Exhibit 105.

4 THE COURT: I see, yes.

5 THE WITNESS: And proceeds on to the middle
6 of the page 836.

7 BY MR. GILLIS:

8 Q Do you recall the testimony of Mr. Bryden as to
9 who this Jama Abdulsalam is?

10 A I do, yes, sir.

11 Q Could you tell us what he said about that.

12 A He said Sheikh Jama Abdulsalam was affiliated with
13 al-Shabaab in 2010 once returning from the United
14 Kingdom, that he had the same ideology as Sheikh Mumin
15 and was a propagandist who reported al-Shabaab online.

16 Q Would you look, please, at Government's
17 Exhibit 10, in particular on the third and fourth
18 entries on Exhibit 10.

19 What do you see there about those two entries?

20 A I see here that Muna Osman Jama sent in the two
21 entries for a total of \$350 to Jama Abdulsalam in
22 Somalia.

23 Q Do you see the first entry there for Bashir Gelle?

24 A Yes, sir, I do.

25 Q From the testimony of Ms. Esse and Mr. Bryden, can

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1 you tell us what their testimony was with respect to
2 Bashir Gelle?

3 A Yes. Ms. Esse stated that Bashir Gelle had
4 appeared in the ISDAC chat room soliciting money for
5 al-Shabaab.

6 Mr. Bryden had testified that Bashir Gelle had
7 been a supporter of al-Shabaab in the same context when
8 she mentioned Sheikh Mumin and Jama Abdulsalam.

9 Q Then, if you would, please turn to Exhibit 168 in
10 particular.

11 MR. GILLIS: One moment, Your Honor.

12 BY MR. GILLIS:

13 Q If you'd focus on pages 3 through 5, the top of --
14 actually, 3 and 4.

15 Have you reviewed 3 and 4?

16 A Yes, sir, I have.

17 Q Who are the communicants there?

18 A That is a phone conversation between Ms. Hinda
19 Osman Dhirane and Habiba on September 21, 2013.

20 Q What event took place on that day?

21 A The Westgate Mall attack in Nairobi, Kenya.

22 Q Could you summarize for us what the defendant and
23 Habiba were saying to one another?

24 A They were referencing the attack in Kenya that's
25 occurring on this day through the context. They're

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1 referencing how it is ongoing. Ms. Habiba says, A lot
2 of people have been massacred today in Kenya.

3 They're discussing who is doing the shooting.

4 Q When told that there are many people being
5 massacred, what was Ms. Dhirane's response to that?

6 A She stated it was actually the police who were
7 doing the shooting because the people inside were just
8 holding hostages. They are the ones who have massacred
9 the people, the police.

10 This is on the top of page 42422 [sic].

11 Q Well, if you could, focus on the middle on page 3
12 there. Habiba tells her that a lot of people have been
13 massacred today in Kenya at a mall. Dhirane's response
14 to that news is what?

15 A Ms. Dhirane states, You have seen how the Somalis
16 are dying everywhere. Let them -- referencing those
17 massacred in the mall -- let them die too.

18 Q So would you, then, look at Government's
19 Exhibit 169 and focus in particular on pages-- well,
20 first of all, who are the communicants there?

21 A It says Ms. Hinda Osman Dhirane and Ms. Muna Osman
22 Jama on September 23, 2013.

23 Q What event took place on that day?

24 A So the mall attack was still ongoing during this
25 time frame.

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1 Q What is it that they discuss on those pages?

2 A Towards the bottom of page 117097 [sic], they
3 reference, Have you seen the turmoil? The heavy rain
4 is still pouring, which is a clear reference to the
5 attack that is still ongoing. The siege was still
6 ongoing up until the next day.

7 Ms. Dhirane states that, Yes, a lot will change.
8 The grass will be greener. It has unwoke a sleeping
9 public, going into page 2 of 17098.

10 Q Exhibit 8, from your recollection of it, was the
11 defendant accessing media reporting on the Westgate
12 attack?

13 A Yes.

14 Q At that time?

15 A Yes, sir.

16 MR. GILLIS: Your Honor, at this time, we'd
17 like to play a brief audio clip from the conversation
18 that's been translated into 169, and that's 169B1. In
19 particular, we would begin at 3.31, which is the time
20 stamp on it, and continue to about 6.10. So it's --

21 THE COURT: What language is this?

22 MR. GILLIS: It's in Somali, Your Honor, but
23 it's been subtitled.

24 THE COURT: All right. I'll hear it.

25 MS. MINTER: Your Honor, I would object to

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1 that based on a lack of foundation for the subtitling.

2 I would also submit that it's duplicative.

3 The Court has the transcripts, which is the

4 government's preferred method of putting these calls

5 into evidence. I would say it's cumulative, and I

6 would say it's very likely prejudicial.

7 THE COURT: All right. I'll hear it. The

8 objection is overruled. Let me hear it.

9 This is in evidence, correct?

10 MR. GILLIS: The transcript is in evidence,

11 Your Honor, but I should offer that the audio clip,

12 169B.1.

13 THE COURT: Over objection, I'll let that in.

14 (An audio is played.)

15 BY MR. GILLIS:

16 Q Agent, would you turn with me, please, to

17 Government's Exhibit 46.

18 First of all, who were the parties to that call?

19 A It was Ms. Fardowsa Jama Mohamed and Ms. Muna

20 Osman Jama on April 17, 2012.

21 Q Would you please review pages 763 to 765 of that

22 exhibit.

23 A I'm sorry. Through which page?

24 Q Through 765.

25 A Yes, sir.

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1 Q What are they discussing there?

2 A So starting on 763, they're referencing a woman
3 who stated she would be unwilling to pay this month.
4 Ms. Fardowsa Jama Mohamed asked, What happened? Did
5 they become I'tisaam? The reason the woman gave for
6 not being able to pay was because she was caring for
7 orphans, but the clerics had taken away the people who
8 donate to her.

9 So she tells Ms. Jama that she was unable to pay
10 this month. Ms. Jama relays this to Fardowsa Jama
11 Mohamed. Ms. Muna Jama states to Ms. Fardowsa Jama
12 Mohamed, The living expenses to pay are indispensable.
13 We must pay those first. I told the woman to register
14 the orphans. They will be taken care of, but the money
15 for the living expenses is indispensable.

16 Going on to page 765, there in the middle,
17 Everyone must pay 50 for the orphans, 50 for the
18 wounded, 50 for the people in the mountains.

19 Q If you would, look at page 761 on the first half
20 of that page, rather 761 of 46 and perhaps page 4 for
21 context.

22 So what is Jama saying there?

23 A In page 761?

24 Q Yeah.

25 A She states that she sent her the living expenses

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1 last month.

2 Q All right. On the 20th, is that what she says?

3 A I'm sorry. Yes, sir, on the 20th of last month.

4 Q Which would be about March 20, 2012; is that
5 right?

6 A About, yes, sir.

7 Q All right. Would you look, please, at
8 Government's Exhibit --

9 MR. GILLIS: One moment, Your Honor.

10 BY MR. GILLIS:

11 Q Government's Exhibit 10 -- do you see there
12 payments by Defendant Jama on March 25 and 27 --

13 A I do, yes, sir.

14 Q -- to Fardowsa Jama Mohamed?

15 A Yes, sir, I do.

16 Q She is the same as this Umu Camaar that she was
17 speaking with?

18 A She is, yes, sir.

19 Q Then if you would, turn with me to Government's
20 Exhibit 79.

21 THE COURT: Exhibit 79?

22 MR. GILLIS: Yes, Your Honor.

23 BY MR. GILLIS:

24 Q Who are the parties to that conversation?

25 A It says Muna Osman Jama and Hinda Osman Dhirane on

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1 June 7, 2012.

2 Q You can review that.

3 Are you familiar with this particular
4 conversation?

5 A Yes, sir, I am.

6 Q So would you tell us, then, what's being discussed
7 there.

8 A So the phone call starts off with Ms. Dhirane
9 relating to Ms. Muna Osman Jama that the girls had
10 called her, that the Iftiin hawala had told the girls
11 that there was money to be picked up but they didn't
12 know who sent it. So Dhirane had told them that she
13 would check with Muna Osman Jama to see who sent it.

14 Ms. Dhirane is asking Muna Osman Jama if it was
15 Umu Ibrahim, who we know as Fahria Hassan in the
16 Netherlands. It's either Umu Ibrahim or Khuluud. I
17 know both of them send through Iftiin. Please contact
18 Umu Ibrahim and find out if she was the one who sent
19 the money.

20 THE WITNESS: That's on page 1, Your Honor.

21 BY MR. GILLIS:

22 Q Okay. So there's a lot of information being
23 relayed from one person to another here, information
24 that's being communicated by Umu Ibrahim?

25 MS. MINTER: Objection, leading.

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1 THE COURT: Overruled. I understand.

2 BY MR. GILLIS:

3 Q Hayat Abdi, Fahria Hassan. And she's talking
4 there about sending it -- if you would, look at the
5 next --

6 THE INTERPRETER: Your Honor, the interpreter
7 cannot hear.

8 Come closer to the mic, please.

9 Thank you.

10 BY MR. GILLIS:

11 Q So they're discussing sending the money to Jama's
12 father?

13 A Yes, that comes up.

14 Q Was there a conversation -- was part of this
15 conversation about the teacher's wife going to the
16 husband to pick up the money?

17 A Yes, it is on page 2.

18 Q Was there some concern raised by the people in
19 Somalia that were going to pick up the money from the
20 father?

21 A Yes, and this relates to other calls as well. But
22 in this call in particular, these women -- when Osman
23 Jama, Muna Osman Jama's father, had come to talk to
24 them, he had asked them a bunch of questions to the
25 point that they were worried that he was a security

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1 person, in Ms. Dhirane's words, as it was relayed to
2 her by the women.

3 THE COURT: Where do you see this?

4 THE WITNESS: This is on page 2, US-2305. It
5 starts out in the middle of the page with Ms. Dhirane,
6 the largest paragraph there starting with, She said.

7 THE COURT: Right. I see it.

8 THE WITNESS: Then if you go further on,
9 Ms. Dhirane -- towards the bottom, she said, We became
10 so worried and wondering if this old man is a security
11 person.

12 BY MR. GILLIS:

13 Q Actually, if you then look at Government's
14 Exhibit 85, pages 3 and 4, about the middle of 3 to
15 two-thirds into page 4.

16 A Okay. Yes, sir.

17 Q This is on the 11th of June, three or four days
18 after the conversation we were just talking about from
19 Government's Exhibit 79?

20 A That is correct, sir.

21 Q So Jama is telling Dhirane that she had sent them
22 up -- well, first of all, there was concern about where
23 to send the money and the living expenses and that it
24 might be a good cover?

25 A Yes, sir.

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1 THE COURT: Why don't you ask him the
2 question as far as how he reads this.

3 MR. GILLIS: I beg your pardon. I will, Your
4 Honor.

5 BY MR. GILLIS:

6 Q How do you relate this conversation to the one
7 that we were just looking at? If you could, summarize
8 the conversations in those two exhibits.

9 A So in the middle of page 3 on 1945, Ms. Jama is
10 stating in regards to the living expenses for the aunt
11 in Hargeysa, how should I send it? I am scared of it.
12 What should I do?

13 This is still on page 3. Ms. Dhirane says,
14 Actually, that place is good cover. It is not one of
15 the suspected places.

16 Q I mean, do the two conversations that we've been
17 talking about relate to one another in some way?

18 A They do.

19 Q Can you just summarize what that relationship is
20 and who was talking to whom about what?

21 A Yeah. So based on the concern for how to get
22 money to the women in Hargeysa, they agree that one
23 method they'll employ is Ms. Jama will send her father
24 money and he will then bring it to Hargeysa. This
25 relates directly to Government's Exhibit 79 in which

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1 they're talking about the father coming to the location
2 and asking a number of questions that concern them.

3 Q I'm sorry?

4 A I was just going to say that they continue on in
5 Exhibit 79 stating that the women had agreed with the
6 father, Osman Jama, that they would exchange numbers
7 and send the money through Zaad.

8 MS. MINTER: Your Honor, I presume the Court
9 recognizes this is subject to our continuing objection.

10 THE COURT: Yes.

11 BY MR. GILLIS:

12 Q At the bottom of pages 3 and 4 of Government's
13 Exhibit 79 -- at the bottom of 3 and the top of 4,
14 what's that about?

15 A So this is Ms. Dhirane relating to Ms. Muna Osman
16 Jama about the Zaad system, the Zaad system that the
17 women in Hargeysa had agreed upon to use with
18 Ms. Muna's father, Osman Jama. Ms. Jama herself --
19 Ms. Muna Jama was not familiar with it. She is
20 explaining it's a good system. It's simple. It's
21 money that can be sent over the phone.

22 Q I'm sorry?

23 A So I was putting it into context as far as what
24 the Zaad was.

25 Q Go ahead.

Goodman - Direct by Mr. Gillis

1 A So at the bottom of page 3 of Government's
2 Exhibit 79, Ms. Dhirane states, It's a simplified
3 system but things can be hidden on it. They -- law
4 enforcement -- could use it for investigative tasks.

5 Ms. Jama proceeds to state, Well, we can -- it's
6 fine. We can just outsmart them. All we state is
7 that -- have you sent the money? Did you receive the
8 money? We do not discuss the actual business of it.
9 And then in this case, all you're referring to is
10 you're sending to your paternal aunt or your maternal
11 aunt. Who cares?

12 Q Then in that same conversation -- at the bottom of
13 5 and onto page 6 -- could you summarize, if you
14 would -- after you review it, summarize that aspect of
15 the conversation and how it relates.

16 A So at the bottom of page 5 of 79?

17 Q Yes.

18 A So here Ms. Dhirane and Ms. Jama are talking about
19 what is going on -- this is the bottom of page 5 --
20 what is going on in the central area with the mountains
21 and the other things that are going on.

22 Ms. Dhirane relates that the cleric called them
23 the big paternal uncle who went there in the recent
24 past. He advised that all the families will be moving
25 out referring -- Ms. Dhirane -- further to -- at

Goodman - Direct by Mr. Gillis

1 page 6, the top of page 6. He advised the families
2 will be moving out. There's an impending movement, the
3 family. So get ready from our side, Ms. Dhirane states
4 in the middle of the page there.

5 MR. GILLIS: One moment, Your Honor.

6 BY MR. GILLIS:

7 Q So Ms. Dhirane in there says that she had sent
8 money to her father on page-- pardon me -- in
9 Government's Exhibit 85 on page 4?

10 A Ms. Jama states that I have already sent one for
11 this after Ms. Dhirane states you will send to your
12 father.

13 Q She refers to the living expenses?

14 A Yes, sir.

15 Q That conversation was done June 11?

16 A Yes, sir, that is.

17 Q Turn back to Government's Exhibit 10, please.

18 Do you have that in front of you?

19 A Yes, sir, I do.

20 Q Do you see an entry for June 4, 2012, a few days
21 before this conversation?

22 A I do, yes, sir.

23 Q What is that?

24 A It's a transaction from Muna Osman Jama to
25 Mr. Osman Jama in Hargeysa, Somalia.

Goodman - Direct by Mr. Gillis

1 Q Who is Osman Jama?

2 A Ms. Muna Osman Jama's father.

3 MR. GILLIS: If I could, Your Honor, just
4 have a moment to review my notes and consult with my
5 colleagues.

6 THE COURT: Yes.

7 BY MR. GILLIS:

8 Q In the conversation there on that exhibit -- in
9 those two conversations we were talking about, the
10 person who went to pick up the payment from the father
11 was the teacher's wife?

12 A Correct. Yes, sir.

13 Q Did you ask the defendant in your interview who
14 this teacher's wife was?

15 A Yes, sir.

16 Q What did she tell you?

17 A She said the teacher's wife was a reference to
18 Barira Hassan Abdullahi.

19 MR. GILLIS: Your Honor, that's all I have
20 for this witness.

21 THE COURT: All right. We'll take our
22 morning recess before the cross-examination.

23 The Court will stand in recess.

24 (Recess from 10:59 a.m. until 11:23 a.m.)

25 THE COURT: Cross-examination, Ms. Minter.

Goodman - Cross by Ms. Minter

1 MS. MINTER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. MINTER:

4 Q Agent Goodman, with the assistance of the court
5 security officer, I'd like to show you Exhibit 193 that
6 you testified to previously.

7 A Yes, ma'am.

8 Q If I could direct your attention to the second
9 column captioned User?

10 A Yes, ma'am.

11 Q With respect to each row, you've -- I apologize.
12 Did you draft this document?

13 A I contributed to its drafting.

14 Q So you and the other drafters with respect to each
15 row of information have entered a name, correct?

16 A Yes, ma'am.

17 Q That name, as I understand it, is developed as a
18 result of your investigation in the case?

19 A That is correct, yes, ma'am.

20 Q If I could summarize what I understood your
21 testimony to be. You gather records in this case,
22 correct -- or perhaps I should say the court-authorized
23 surveillance gathered records, correct?

24 A Yes, ma'am.

25 Q You evaluated those records?

Goodman - Cross by Ms. Minter

1 A Yes, ma'am.

2 Q There were other records that were obtained
3 pursuant to subpoena?

4 A Yes, ma'am.

5 Q The question was there were other records that
6 were gathered pursuant to subpoena?

7 A Yes, ma'am.

8 Q Those included records such as phone records?

9 A Yes, ma'am.

10 Q IP address records?

11 A Yes, ma'am.

12 Q Internet chat records or subscriber records if
13 that's --

14 A Yes, ma'am.

15 Q Records relating to individual's usernames, for
16 example?

17 A Yes, ma'am.

18 Q Your testimony was that you compiled those records
19 and reviewed them?

20 A Yes, ma'am.

21 Q You also reviewed the audio surveillance that was
22 part of the court-authorized surveillance?

23 A Yes, ma'am.

24 Q In doing that, you began to draw connections,
25 correct?

Goodman - Cross by Ms. Minter

1 A Yes, ma'am.

2 Q Based on identifying information that occurred in
3 all of these media?

4 A That's correct.

5 Q So tying together account numbers, usernames,
6 things like that?

7 A Yes, ma'am, absolutely.

8 Q Addresses?

9 A Yes, ma'am.

10 Q With respect to the audio, information that might
11 have been stated in the audio recordings?

12 A Yes, ma'am.

13 Q Such as identifying information like names?

14 A Yes, ma'am.

15 Q Locations?

16 A Yes, ma'am.

17 Q As a result, you came to a conclusion about who
18 you believed the individual was that was associated
19 with each of those pieces of identifying information,
20 correct?

21 A Yes, ma'am.

22 Q So column 2 reflects your conclusions based on
23 your investigation?

24 A Yes, ma'am.

25 Q Column 2 does not reflect any direct evidence that

Goodman - Cross by Ms. Minter

1 was provided to you? For example, no observations that
2 you made?

3 A If all of that was observations --

4 Q No. Put it this way --

5 A Yes, ma'am.

6 Q -- you never directly observed, for example,
7 Ms. Jama using a chat room?

8 A No, ma'am, I did not.

9 Q The same with Ms. Dhirane?

10 A That's correct.

11 Q You never directly observed Ms. Jama on a
12 particular phone call?

13 A That is correct.

14 Q Okay. The same with Ms. Dhirane?

15 A That would be correct.

16 Q You have no witness who has observed Ms. Jama
17 making a particular phone call?

18 A Yes, that is correct.

19 Q Okay. In the course of your investigation, you
20 indicated that you gathered records that indicated the
21 residence or residences of Ms. Jama and Ms. Dhirane
22 over time, correct?

23 A Yes, ma'am.

24 Q Okay. The records that you obtained did not
25 necessarily all directly relate to Ms. Jama for

Goodman - Cross by Ms. Minter

1 example?

2 A You have to be more specific, I believe.

3 Q For example, sometimes you would obtain records
4 that belonged to other family members in that
5 household?

6 A I think belonged would be -- I'd have a hard time
7 saying belonged to. There are other records --

8 Q Associated?

9 A Yes, ma'am.

10 Q So, for example, you might get a phone record with
11 the name of Ms. Jama's husband?

12 A That is correct, yes, ma'am.

13 Q Based on your investigation, your assumption is
14 that that connects to Ms. Jama because she's a resident
15 in that household?

16 A I would say that's an assumption. No, ma'am. I
17 believe it's a totality of the evidence that directly
18 ties her to that facility.

19 Q That's your conclusion based on your --

20 A Yes, ma'am.

21 Q Agent Goodman, you also, as a result of your
22 investigation, observed the other individuals that you
23 believe are involved in this case, correct?

24 A Sorry. With the observation. I apologize. I
25 want to be accurate.

Goodman - Cross by Ms. Minter

1 Q That's my fault. Let me back up.

2 You've heard a fair amount of testimony about a
3 group of 15 women, correct?

4 A Yes, ma'am.

5 Q Part of your investigation involved investigating
6 all of the women of that 15, correct?

7 A Yes, ma'am.

8 Q To the extent that you were able to?

9 A Yes, ma'am.

10 Q So in the course of reviewing the information, you
11 looked at usernames for the other individuals?

12 A Yes, ma'am.

13 Q Phone numbers for the other individuals?

14 A Yes, ma'am.

15 THE INTERPRETER: Your Honor, the interpreter
16 is unable to keep up.

17 THE COURT: You may need to slow down a
18 little bit.

19 MS. MINTER: Thank you, Your Honor. I
20 apologize.

21 BY MS. MINTER:

22 Q You looked at usernames for these other
23 individuals?

24 A Yes, ma'am.

25 Q Phone numbers for the other individuals?

Goodman - Cross by Ms. Minter

1 A Yes, ma'am.

2 Q To the extent that it was available, geographic
3 information for the other individuals?

4 A Yes, ma'am.

5 Q For example, if they stated they lived in a
6 particular place?

7 A Yes, ma'am.

8 Q So you're familiar with all of that information?

9 A Yes, ma'am.

10 Q Okay. As a result of your investigation, you're
11 familiar with an individual named Thabaat?

12 A Yes, ma'am.

13 Q Spelled T-H-A-B-A-A-T?

14 A The online moniker is Thabaat, yes, ma'am.

15 Q You believe that that individual lived in England
16 for a period of time?

17 A Yes, ma'am.

18 Q That that individual at some point went to
19 Somalia?

20 A I don't believe so.

21 Q So you do not believe that Thabaat and Barira are
22 the same person?

23 A I do not believe that Thabaat and Barira Hassan
24 Abdullahi are the same person. I believe it's very
25 well that Thabaat is Barira something something.

Goodman - Cross by Mr. Yamamoto

1 Q But the Barira that's been testified here with
2 respect to the group of 15 women, you do not believe is
3 also known as Thabaat?

4 A That is correct.

5 MS. MINTER: The Court's indulgence, Your
6 Honor.

7 Nothing further.

8 THE COURT: Thank you.

9 Mr. Yamamoto or Ms. Deutsch?

10 MS. MINTER: Your Honor, while Mr. Yamamoto
11 is approaching, I would clarify one of our objections.
12 I think our standing objection covers some of the
13 testimony that Agent Goodman gave before the break.
14 But to be clear, given that there is no other evidence
15 put forth about the identity of the individual that was
16 referred to as Ms. Jama's father, we would certainly
17 object to the speculation with regard to that. I don't
18 believe that that's summary evidence.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. YAMAMOTO:

22 Q Agent Goodman --

23 A How are you doing, sir?

24 Q -- how are you?

25 A I'm doing well. Thank you.

Goodman - Cross by Mr. Yamamoto

1 Q Your interview with Ms. Dhirane started about 5:00
2 in the morning and ended about 10:00 in the morning?

3 A That's correct.

4 Q You did an arrest about 4:00 in the morning?

5 A Yes, sir.

6 Q So it was a night search and a night arrest?

7 A It was an early morning search.

8 Q It was pre-6:00?

9 A Pre-6:00.

10 Q So you had to get special permission for that?

11 A Yes, sir, we did. Yes, sir.

12 Q She was cooperative throughout the interview?

13 A Yes, sir.

14 Q In looking at it, the majority of it was in
15 English?

16 A Yes, sir.

17 Q At times she used an interpreter?

18 A Yes, sir.

19 MR. YAMAMOTO: Your Honor, as I begin this,
20 you asked me yesterday about Government's Exhibit 4I
21 which is the complete interview.

22 THE COURT: Yes.

23 MR. YAMAMOTO: I would move that in.

24 THE COURT: All right. Any objection?

25 MR. GILLIS: Yes, Your Honor.

Goodman - Cross by Mr. Yamamoto

1 THE COURT: The Court is going to admit it
2 under the rule on completeness.

3 MR. GILLIS: Your Honor, if I may have
4 argument on that point.

5 THE COURT: All right.

6 MR. GILLIS: Your Honor, the Fourth Circuit
7 has held and made abundantly clear that the rule of
8 completeness does not apply to the wholesale admission
9 of a defendant's interview. In particular -- I take it
10 the Court is not interested in argument on why it is
11 not admissible under the hearsay exception.

12 THE COURT: Right.

13 MR. GILLIS: Okay. With respect to the rule
14 on completeness, however, the Fourth Circuit has held
15 that the fairness standard does not apply to the
16 introduction of the entire recording or statement when
17 a party only seeks to introduce a portion of it, in
18 other words, when we only seek to introduce a portion
19 of it. Rather -- and I'm quoting from -- I'm not
20 quoting, but I'm citing cases I'll give the Court in a
21 moment. But rather, it necessitates the introduction
22 of those portions that, one, explain an admitted
23 portion; two, place an admitted portion in context; or
24 three, are necessary to avoid misleading the trier of
25 fact.

Goodman - Cross by Mr. Yamamoto

1 Those cases are *United States v. Ricks*, 882
2 F.2d 885 at 892 to 93; *United States v. Shuck*, which is
3 at 1987 U.S. App. LEXIS 19471, at *7 through 11.

4 The Fourth Circuit has said that Federal Rule
5 of Evidence 106 on the rule of completeness has merely
6 a protective purpose, meaning, quote, it goes only so
7 far as is necessary to shield a party from adverse
8 inferences and only allows an explanation or rebuttal
9 of the evidence received. That's *United States v.*
10 *Moussaoui*, 382 F.3d 453 at 481.

11 The rule serves to place in context
12 statements that may be misleading when viewed alone.
13 That's *United States v. Jamar*, 561 F.2d 1103 at 1108.

14 Federal Rule 106, according to the Fourth
15 Circuit, is not intended as a vehicle for the
16 introduction of substantive evidence, meaning the
17 omitted portions, if admitted, are not to be considered
18 as independent evidence but only to evaluate the
19 introduced portions. That's the *Jamar* case at 1109.

20 The Fourth Circuit has applied these
21 identical provisions and guidelines to exculpatory
22 statements. That's *United States v. Lentz*, 524 F.3d
23 501 at 526; *United States v. Chiles*, 185 Fed. Appx. 301
24 at 305; *United States v. Bollin*, 264 F.3d 391 at 414;
25 *United States v. Lutz*, 1998 U.S. App. LEXIS 18301 at

Goodman - Cross by Mr. Yamamoto

1 *18.

2 The Fourth Circuit has held that Federal Rule
3 of Evidence 106 does not require the admission of,
4 quote, self-serving exculpatory statements made by a
5 party which are being sought for admission by that same
6 party. That's *Lentz* at 526.

7 The fact that some of the omitted -- and I'm
8 quoting now. The fact that some of the omitted
9 testimony arguably was exculpatory does not, without
10 more, make it admissible under the rule of
11 completeness. That's *Bollin* at 414.

12 Instead, the exculpatory statements must
13 still serve to clarify or explain the testimony offered
14 by the prosecution -- that's *Lutz* at *18 -- and be
15 otherwise admissible under the Rules of Evidence, which
16 is *Lentz* 526; *United States v. Walker*, 1995, U.S. App.
17 Lexis 26457 at *8.

18 In short, Your Honor, to the extent that any
19 portions of 4I are admissible, they're only admissible
20 to clarify the portions that we've actually introduced.
21 All of the five hours of interview or however long it
22 was, Your Honor, cannot possibly be explanatory of the
23 few portions that we introduced, truly, a matter of a
24 few minutes.

25 Even if it were admissible under the rule of

Goodman - Cross by Mr. Yamamoto

1 completeness, to, in fairness, put those statements in
2 context, the Court could not consider them as
3 substantive evidence but only to clarify or in fairness
4 put in context the parts that we actually admitted.

5 So I submit, Your Honor, that if there's any
6 portion of 4I that should be admitted, it should only
7 be those portions which they specifically identify as
8 being clarifying in some way; otherwise, the rest of it
9 is irrelevant. It can't be considered by the Court as
10 substantive evidence. The exculpatory statements can't
11 be considered as such, Your Honor, under the clear law
12 of the Fourth Circuit from the various several cases
13 we've submitted.

14 So for those reasons, Your Honor, we would
15 object to the admissibility of Government's Exhibit 4I
16 in its entirety.

17 THE COURT: All right. Thank you.

18 Do you want to respond, Mr. Yamamoto?

19 MR. YAMAMOTO: It's the government's own
20 exhibit for God's sake.

21 It's not merely exculpatory language that
22 we're looking for. It was a five-hour interview. They
23 have taken five or ten minutes of that. There's other
24 questions, other responses that deal not only with the
25 portions they've admitted.

Goodman - Cross by Mr. Yamamoto

1 For instance, there's a discussion about the
2 money. The government has raised that or is attempting
3 to raise it through the IRS documents to show there's
4 no way they could have sent this money to Somalia or
5 how did they raise it. We would show through the
6 interview where that money went once it went to
7 Somalia. The totals add up.

8 There are other instances in there where the
9 discussion with Barira and the fact that she denied
10 having ever received money or sent money to Barira.
11 Well, a few minutes later -- that occurs about 7:30.
12 About 7:38, there's a fairly lengthy discussion about
13 Zaad where she then says, Yeah, I went to Barira's
14 store. I bought items from her. I gave her money. I
15 took a lady there who sold her gold. Barira gave her
16 some money. Then she sent me the rest of the money
17 through Zaad because the lady didn't have a phone. So
18 in a number of payments, I got that money and gave it
19 to the lady.

20 So it goes through -- now, I didn't sit
21 down -- I guess I could have sat down and made clips of
22 all of this stuff to give to the Court. What I
23 intended to do was have it admitted in whole and then
24 point out portions of the testimony in our closing
25 argument for the Court. If the Court wanted to look at

Goodman - Cross by Mr. Yamamoto

1 that, it could. If the government wanted to respond to
2 it, it could. I'm certainly not going to sit here and
3 go through that entire five hours.

4 THE COURT: Anything else on that?

5 MR. GILLIS: No, Your Honor.

6 THE COURT: All right. The Court recognizes
7 the limited purpose for which the transcript would be
8 admitted. The government did not admit specific
9 portions of the transcript but rather elicited the
10 substance of testimony during the interview. So it's
11 going to be important for the Court to consider the
12 other portions of the transcript as they relate to what
13 the government elicited by way of the substance of
14 those interviews under the rule of completeness.

15 So until I review that, I'm not going to be
16 able to make those judgments. So I'm going to
17 conditionally admit it subject to the Court's further
18 review of the transcript relative to the substance of
19 what the government has put in evidence and will make a
20 final ruling as to the scope of what should be admitted
21 under the rule of completeness.

22 All right. You may proceed.

23 BY MR. YAMAMOTO:

24 Q Special Agent Goodman --

25 A Yes, sir.

Goodman - Cross by Mr. Yamamoto

1 Q -- we're going to spend some time on, basically,
2 the interview.

3 A Yes, sir.

4 Q If you don't recall something, you could get your
5 302 to refresh your recollection.

6 A That would be helpful.

7 Q Now, you talked at length or some length -- let me
8 put it that way -- about Hodan. Of course, that was
9 clip 1, and she indicated Hodan was her relative on her
10 mother's side?

11 A That is correct, sir.

12 Q Did you find any information that came out
13 differently than that, that she wasn't, or did you find
14 any that she was?

15 THE COURT: Could you adjust the microphone.

16 MR. YAMAMOTO: Sorry, Your Honor.

17 A That's correct, sir.

18 Q What's correct?

19 A The answer to your question that --

20 Q You didn't find any information either way?

21 A Other than the transcripts in which she said that.

22 Q She said that. Okay.

23 Now, in clip 4, you talked about Barira and money
24 and whether she got money from Barira or whether she
25 sent money to Barira?

Goodman - Cross by Mr. Yamamoto

1 A Yes, sir.

2 Q She said she didn't. You spent a few minutes on
3 that, and she continually said she didn't. That was
4 about 7:30. About 7:38 you started to talk about Zaad?

5 A Yes, sir.

6 Q You recall what she said there, that she did go to
7 Barira's store and she did, in fact, buy items from
8 Barira, pay her?

9 A Correct. I believe I testified to that, yes, sir.

10 Q That she took a lady there who sold Barira gold?

11 A Yes, sir.

12 Q Barira paid her \$1500 at that time, and then she
13 sent an additional \$1500 to Ms. Dhirane through Zaad,
14 correct?

15 A That is correct, sir.

16 Q That was done over a number of payments a few
17 months later?

18 A According to Ms. Dhirane, yes, sir.

19 Q That was done because the lady didn't have a phone
20 to accept Zaad payments with?

21 A According to Ms. Dhirane, yes.

22 Q Now, you also asked her about the money that was
23 sent to her by her husband?

24 A Yes, sir.

25 Q In total, that money amounted to about \$45,600?

Goodman - Cross by Mr. Yamamoto

1 A That's how much she relayed in the interview.

2 Q That's what you determined?

3 A Yes, sir.

4 Q She indicated to you --

5 THE COURT: What was the number you
6 mentioned?

7 MR. YAMAMOTO: \$45,600.

8 THE COURT: All right.

9 BY MR. YAMAMOTO:

10 Q That is actually on one of your government
11 exhibits where -- it's 13 or something?

12 A Yeah. I don't remember the government exhibit,
13 but yes, sir, that was --

14 Q It was prepared showing the money he sent to her
15 in Somalia?

16 A From September 2010 to January --

17 Q January.

18 A -- January 2012 when she returned.

19 THE COURT: This is from her father?

20 THE WITNESS: Her husband.

21 MR. YAMAMOTO: From her husband.

22 BY MR. YAMAMOTO:

23 Q Now, she was in Somalia from September 2010 to
24 January 2012, which is 16 or 17 months?

25 A I would say 15, but yes, sir.

Goodman - Cross by Mr. Yamamoto

1 Q You have four in 2000 --

2 A It wasn't all of September. It wasn't all of
3 January.

4 Q That is right. Sixteen or seventeen.

5 You have October, November, December, all of 2011,
6 and then you've got January 2012. So it comes out to
7 15, 16, 17 months, somewhere in there?

8 A We can do the numbers, but I think we'll disagree
9 on the 16, 17.

10 Q Fifteen, sixteen, seventeen?

11 A Yes, sir. Fifteen, sixteen, yes, sir.

12 Q Now, she said that he sent her \$9,000 for the
13 return tickets to the United States?

14 A Yes, sir.

15 Q She said that he sent her about \$1,000 a month for
16 expenses?

17 A Yes, sir.

18 Q She also indicated that she paid \$200 for rent?

19 A Yes, sir.

20 Q \$100 for utilities?

21 A Yes, sir.

22 Q \$300 for her children's education, schooling?

23 A I don't remember that number. I'm sorry. I
24 remembered the other two numbers. I just didn't
25 remember that.

Goodman - Cross by Mr. Yamamoto

1 Q She did indicate she gave some money -- do you
2 want to look at your notes?

3 A Yes, sir.

4 THE COURT: Do you have an objection?

5 MR. GILLIS: I do, Your Honor. Just to be
6 clear, for the reasons I've stated in the Fourth
7 Circuit law, this is appropriate perhaps to put the
8 statement in context, but whether these payments were
9 made or not made cannot be proven through the
10 testimony.

11 THE COURT: I understand.

12 MR. YAMAMOTO: We're not proving. We're just
13 indicating what the interview was about.

14 THE COURT: I understand.

15 THE COURT SECURITY OFFICER: I need the
16 document from Mr. Gillis, sir.

17 THE COURT: Do you have the 302?

18 MR. GILLIS: Yes, sir.

19 MR. YAMAMOTO: I've got one.

20 MR. GILLIS: One moment, Your Honor. I put
21 it away, but I have it.

22 MR. YAMAMOTO: It's okay. I got it.

23 MR. GILLIS: Oh, I'm sorry.

24 BY MR. YAMAMOTO:

25 Q If you go to page 9 of your notes.

Goodman - Cross by Mr. Yamamoto

1 A Thank you.

2 Q Sorry. I think I marked it for you.

3 A Thank you, sir. Yes, sir. That's correct, \$300
4 for the kid's school.

5 Q So these were monthly payments she was making?

6 A In that \$1,000 that he was sending, yes, sir.

7 Q So she would get \$1,000 a month, \$100 for
8 utilities, \$200 for rent, \$300 for schooling. She
9 bought a car for \$2,500, she indicated to you?

10 A Again, I would clarify, sir, that she received
11 \$1,000. That \$1,000 was used, in part, for -- the \$300
12 for the kids, the \$200 for the rent, the \$100 for food
13 in that \$1,000, not on top of it.

14 Q That's right. I'm sorry. I didn't mean to imply
15 that. She got \$1,000, and she used that money for
16 rent, utility, schooling, and then the \$400 she had
17 left over each month went to food and gas for her car,
18 I think she indicated.

19 A Yes, sir.

20 Q Now, she also paid \$2,500 for a vehicle?

21 A That is correct, sir.

22 Q She also was part of a land purchase. That's not
23 in the interview?

24 A That's not in the interview, no, sir.

25 THE INTERPRETER: Your Honor, the interpreter

Goodman - Cross by Mr. Yamamoto

1 did not hear counsel's question.

2 BY MR. YAMAMOTO:

3 Q She was also part of a land purchase which is not
4 in the interview but which you are aware of?

5 A I'm aware of the document that you're referring
6 to.

7 Q Okay. That was a document that was taken during
8 the search?

9 A Yes, sir.

10 Q And has been entered into evidence here --
11 sorry -- as part of the government exhibits?

12 A Yes, sir, that is correct.

13 Q It's 4C and 4C1?

14 A I don't recall the number, but I recall it being
15 introduced.

16 Q Do you recall the amounts that were paid?

17 A No, sir, I don't.

18 Q \$14,000 and \$5,000?

19 A I don't recall that.

20 Q Okay. But those numbers are on the documents?

21 A Yes, sir.

22 Q So when you total those numbers up, they come out
23 to around \$46,000?

24 A Which numbers, sir?

25 Q The money she was spending for the rent,

Goodman - Cross by Mr. Yamamoto

1 utilities, food, clothing, schooling, gas, \$2,500 for
2 the car, \$9,000 for the tickets, the money for the
3 land, and that's about it. That's where the money
4 went, according to her, correct?

5 A No, sir. The land did not come up in the
6 interview.

7 Q Yes. That's correct.

8 A Yes, sir.

9 Q But that's where you determined that money went?

10 A During the interview, it was determined that she
11 received \$1,000 a month for that 15, 16 months, \$16,000
12 plus \$9,000 for the return ticket home, which she
13 stated he had to borrow. So that came out to about
14 \$24,000, \$25,000.

15 Q Now, she also indicated to you that she had family
16 members both in Somalia, Canada, Italy, and Sweden?

17 A That's correct, sir.

18 Q That she would send money to her two sisters and
19 her brother in Somalia on occasion when they asked for
20 it?

21 A That's correct, sir.

22 Q In fact, part of the records you obtained from
23 North America Transfer Company was a list of the
24 amounts of money she did send to Somalia?

25 A That is correct, sir.

Goodman - Cross by Mr. Yamamoto

1 Q Let me show you. This is on a return from one of
2 your subpoenas?

3 A Yes, sir.

4 Q It indicates money that she sent over the years
5 through that transfer company?

6 A Yes, sir.

7 Q Now, when she left Somalia, she went to a number
8 of different countries. She went to Yemen. She went
9 to Ethiopia. Excuse me. That's out of context.

10 A Yeah.

11 Q When she left as a refugee from Somalia --

12 A Yes, sir.

13 Q -- she went through Yemen. She went through
14 Ethiopia, Hargeysa, a number of places she had
15 indicated to you over the period of time before she got
16 to the United States?

17 A Yes, sir. I don't recall --

18 MR. GILLIS: Objection to hearsay, Your
19 Honor.

20 THE COURT: Overruled.

21 A I don't recall if that was the order, but yes,
22 sir.

23 Q I'm not saying that's the order, but those are
24 countries she went through?

25 A I believe so, yes, sir.

Goodman - Cross by Mr. Yamamoto

1 Q Areas she went through.

2 Now, she told you she sent money to her family,
3 and she sent money to another individual. Do you
4 recall that?

5 A I'd have to refresh my memory, sir.

6 Q It would be page 10 of your document.

7 A Thank you, sir.

8 Q There are two people she sent it to. She told you
9 she sent money to Daahir Abdi?

10 A Yes, sir.

11 Q She told you she sent money to a lady named Dahabo
12 Salaad who was a widow whose husband fought with the
13 Union Courts?

14 A Yes, sir.

15 Q So in addition to her family, she did indicate to
16 you that she did send money to other individuals?

17 A She did, yes, sir.

18 Q At one point, you asked her about talking to
19 Barira, and she indicated that she had stopped talking
20 to her after that conversation about jail?

21 A Yes, sir.

22 Q But then just prior to the Zaad conversation, do
23 you recall her telling you that she hadn't talked to
24 Barira in about a year?

25 A I don't recall that.

Goodman - Cross by Mr. Yamamoto

1 Q Okay. But if it was said, it would be in the
2 video, audio/video?

3 A Yes, sir.

4 MR. YAMAMOTO: The Court's indulgence.

5 BY MR. YAMAMOTO:

6 Q Let me go back. I'm sorry.

7 A Yes, sir.

8 Q Go back to Dahabo Salaad for a moment.

9 A Yes, sir.

10 Q There was another lady Xawo Kiin Xasan Raage in
11 the next paragraph.

12 A Xawo Kiin Xasan Raage.

13 THE INTERPRETER: The interpreter did not get
14 the name.

15 THE WITNESS: Xawo is X-A-W-O. Kiin is
16 K-I-I-N. Xasan is X-A-S-A-N. Raage is R-A-A-G-E.

17 BY MR. YAMAMOTO:

18 Q On the next page, there's a woman named Amina
19 Cabdiraxman.

20 Now, Salaad and Cabdiraxman were people she'd met
21 on Paltalk and sent money to, according to her, right?

22 A Salaad. And it was Xawo Kiin.

23 Q Xawo is one of the people that was talking on
24 Paltalk?

25 A Correct. I was asking that question because that

Goodman - Redirect by Mr. Gillis

1 phone -- I was showing her the information you just
2 provided me, US-0169 --

3 Q Uh-huh.

4 A -- asking about those transactions because the
5 phone number for Xawo Kiin and Dahabo was listed as the
6 unindicted coconspirator in the Amina Ali case. So she
7 was relating to me how those connected to Amina Ali and
8 why she sent them that money.

9 MR. YAMAMOTO: Is Government's 20A in
10 evidence?

11 THE COURT: I'm sorry. Which exhibit?

12 MR. YAMAMOTO: 20A.

13 THE COURT: I don't believe so.

14 Is it, Ms. Allen?

15 THE CLERK: 20A, as in alpha, is in evidence.

16 THE COURT: All right.

17 MR. YAMAMOTO: Thank you, Your Honor.

18 Nothing further.

19 THE COURT: All right. Any redirect?

20 MR. GILLIS: Yes, Your Honor.

21 First, could I have one moment, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. GILLIS:

24 Q Just to clarify, Agent Goodman, when you were
25 asked by Ms. Minter about the names for the facilities

Goodman - Redirect by Mr. Gillis

1 being developed by your investigation --

2 A Yes, sir.

3 Q -- just to be clear, is there anything that you
4 used to identify those users, those names, those
5 facilities? Is there anything that's contained in that
6 exhibit that is not supported by evidence in this case
7 that's been admitted into evidence?

8 A I'm sorry. I'll need you to ask it again, please.

9 Q Yeah. It's a bad question.

10 So you were asked by Ms. Minter about whether
11 these names that you've identified with these various
12 facilities --

13 A Yes, sir.

14 Q -- whether those were developed by your
15 investigation. What I'm asking you is, is there
16 evidence outside of the exhibits that have been
17 introduced in this trial that you're relying upon to
18 identify those names?

19 A No, sir.

20 MS. MINTER: I would object to the relevance.

21 THE COURT: I'll let him answer.

22 A It's all the evidence that we were talking about
23 that's listed on 193, the testimony of the individuals
24 that have testified previously.

25 Q That's what we went through laboriously yesterday;

Goodman - Redirect by Mr. Gillis

1 is that right?

2 A It is. I feel like the Court asked a question
3 about what I used, and I responded with all of the
4 above. I feel like there's a lot more that could go
5 into that because it's not to take into account that
6 193 was a simple task. It was --

7 Q No. My question is, 193 was constructed only from
8 exhibits that have been admitted into this case?

9 A That's correct. Yes, sir.

10 Q Is that right?

11 A That is correct.

12 Q You were asked about whether the names of the
13 defendant and others was not from direct admission. In
14 other words, you weren't standing on the lawn while she
15 was using the computer?

16 A That is correct, sir.

17 Q However, in Exhibit 4J, in the defendant's own
18 handwriting, she told you that she used, for example --

19 I withdraw the question, Your Honor. I beg your
20 pardon.

21 THE COURT: All right.

22 BY MR. GILLIS:

23 Q When you were asked by Mr. Yamamoto whether during
24 the interview of Defendant Dhirane you determined that
25 she received \$1,000 per month, did you mean to say that

Goodman - Redirect by Mr. Gillis

1 you independently determined that figure?

2 A No. That was stated during the interview by
3 Ms. Dhirane.

4 Q Then you were asked by Mr. Yamamoto about this
5 Xawo Kiin that is reflected on the document that he
6 showed you.

7 A Yes, sir.

8 Q In addition to being an indicted coconspirator in
9 the case you mentioned, do you recall the testimony of
10 Mr. Bryden that she was an al-Shabaab fundraiser?

11 A Yes, sir.

12 Q Do you recall the testimony of Mr. Bryden that she
13 collected money for al-Shabaab in the ISDAC chat room?

14 A That's correct.

15 MR. GILLIS: That's all I have, Your Honor.

16 THE COURT: All right. Thank you.

17 Agent Goodman, you may return to counsel
18 table.

19 (The witness stands aside.)

20 MR. YAMAMOTO: Your Honor, I'm sorry. I
21 forgot to move in the exhibit I gave this witness.

22 THE COURT: What number is it?

23 MR. YAMAMOTO: HD4, Henry David 4.

24 MR. GILLIS: No objection, Your Honor.

25 THE COURT: All right. Without objection,

1 Defense Exhibit HD4 is admitted.

2 The government will call its next witness.

3 MR. GILLIS: Your Honor, we have no further
4 witnesses to call. There's a few exhibits I'd like to
5 move into evidence. Then if the Court would indulge
6 me, I'd like to take the lunch break to confer with my
7 colleagues here about whether there's anything else,
8 any other documents or exhibits. We have no more
9 testimony to offer at this point.

10 THE COURT: All right.

11 MR. GILLIS: I can tell you the exhibits that
12 we would move in at this point.

13 THE COURT: All right.

14 MR. GILLIS: Your Honor, evidently, I skipped
15 a page in listing all of the chats and calls that I
16 wanted to -- well, why don't I go in order, Your Honor.
17 First, I would offer Government's Exhibits 6A, B, and
18 C, which are pursuant to the judicial notice for the
19 Amina Ali documents, the court documents in connection
20 with her charges.

21 Would you like me to go through them all
22 first, Your Honor?

23 THE COURT: Let me look at these.

24 Is there any objection to those?

25 MS. MINTER: The Court's indulgence, Your

1 Honor.

2 MR. YAMAMOTO: I'm not sure we need them,
3 Your Honor. I don't know what the purpose would be.

4 THE COURT: All right.

5 MR. GILLIS: Your Honor, the transcripts
6 mention a number of conversations involving Amina Ali.
7 We've heard testimony from Ms. Esse about it, and the
8 timing of the charges and other activities indicated by
9 the PACER document, we submit, are relevant.

10 THE COURT: All right. Over objection, the
11 Court will admit Exhibits 6A, B, and C.

12 MR. GILLIS: Then, Your Honor, for the same
13 reason, we would offer Government's Exhibits 9A, 9B,
14 and 9C, which refer to the prosecution of another
15 individual mentioned by the conspirators in the
16 transcripts and the calls and chats.

17 THE COURT: This is Shaker Masri?

18 MR. GILLIS: Yes, sir.

19 THE COURT: Any objection to those?

20 MS. MINTER: Your Honor, our objection to
21 both sets would be that with respect to it being a
22 public record, I don't know that the PACER printout
23 meets the standard. I would submit that the government
24 needs something more formal.

25 MR. GILLIS: Your Honor, I believe --

1 THE COURT: Over objection, the Court is
2 going to admit Exhibits 9A, B, and C.

3 MR. GILLIS: Then, Your Honor, I overlooked
4 these calls and chats, Government's Exhibits 31, 32,
5 33, 33B -- which apparently there's some question about
6 whether that was admitted -- 37, 41, 42, 44, 45, and
7 47A.

8 THE COURT: All right.

9 MR. GILLIS: Pardon me. And then 105.
10 That's from the set of the calls and chats.

11 THE COURT: Over objection, subject to the
12 Court's final ruling on the objections that have been
13 raised as to the other chats, the Court will admit
14 Exhibits 31, 32, 33, 33B, 37, 41, 42, 44, 45, 47A, and
15 105.

16 Did I get all of those correctly, Mr. Gillis?

17 MR. GILLIS: Yes, Your Honor.

18 THE COURT: All right.

19 MR. GILLIS: Then, finally, Your Honor, with
20 respect to the calls and chats and other communications
21 by the defendants or among the defendants and the
22 coconspirators, we offer -- in some cases, the Court
23 reserved judgment on their admissibility or with some
24 contingency. We would offer those for full substantive
25 use.

1 We've proven the existence of the conspiracy.
2 We've proven that these individuals who were discussing
3 these matters were members of the conspiracy, and we've
4 established that the conversations took place during
5 and in furtherance of the conspiracy.

6 Also, so they would all fall under the
7 hearsay exception for coconspirator statements, as well
8 as the statements made by the defendants, which would
9 be independently admissible as admissions by a party
10 opponent.

11 So for those reasons, whatever reservations
12 the Court may have had with respect to the substantive
13 use of those calls and chats, we move them in for that
14 purpose.

15 THE COURT: All right. Well, the Court has
16 conditionally admitted all of the chats subject to the
17 Court's final ruling on the hearsay objections based on
18 801(d)(2)(E). I think I have that correctly, the
19 coconspirator exception. So the Court is going to make
20 a definitive ruling on that within the context either
21 of Rule 29 or before it renders its verdict.

22 MS. MINTER: If I may, Your Honor, we have
23 drafted a document outlining our objections to the
24 various exhibits. I will tell the Court that after
25 this morning's admissions, it's back to being a bit of

1 a garbled mess. I would ask the Court for permission
2 to file by the end of day today so that we can present
3 it clearly.

4 THE COURT: That's fine.

5 MS. MINTER: Thank you.

6 THE COURT: All right.

7 MR. GILLIS: Your Honor, there are a few
8 other exhibits that have to do with our request for
9 judicial notice as to the designation of al-Shabaab,
10 al-Qaeda, and other individuals that were mentioned.
11 If I may, Your Honor, over the break, I'll pinpoint
12 which parts of those because the Federal Register in
13 some cases --

14 THE COURT: All right.

15 MR. GILLIS: Apart from that, Your Honor, I
16 believe at this point, that's all the exhibits that we
17 are offering.

18 With the Court's indulgence, assuming the
19 Court is going to take a lunch break soon, could I
20 confer with my colleagues over lunch as to whether we
21 have all the evidence in that we want before we rest?

22 THE COURT: Yes. All right.

23 MR. GILLIS: Thank you, Your Honor.

24 THE COURT: Assuming the government rests,
25 Ms. Minter, Mr. Yamamoto, and Ms. Deutsch, are you

1 ready to proceed? How are you ready to proceed at this
2 point?

3 MR. KAMENS: Your Honor, I am ready to
4 proceed with the Rule 29. I prefer that the government
5 rest before we do so.

6 THE COURT: All right. I understand.

7 In terms of witnesses, is it the fellow on
8 Monday we're waiting on?

9 MS. MINTER: In terms of witnesses, Your
10 Honor, I think at this point we're stuck with Monday.

11 THE COURT: Okay. Do you anticipate more
12 than one witness or just one witness?

13 MS. MINTER: Your Honor, in the event that
14 it's more than one witness, any additional witnesses
15 would be extraordinarily brief. I think that we will
16 be able to get our evidence to the Court quickly.

17 THE COURT: All right.

18 MS. MINTER: In terms of today, Mr. Kamens is
19 prepared to argue the Rule 29, but I think, then, we
20 would ask the Court to recess until Monday.

21 THE COURT: All right. We'll go ahead and
22 take our luncheon break now. We'll reconvene at 1:15
23 at which time we'll hear anything further from the
24 government. Assuming the government rests, we'll take
25 up Rule 29 motions.

1 The Court stands in recess.

2 MR. GILLIS: Yes, Your Honor. Thank you.

3 (Recess from 12:15 p.m. until 1:35 p.m.)

4 THE COURT: Mr. Gillis.

5 MR. GILLIS: Your Honor, the government moves
6 in Government Exhibits 301 and 305 and asks the Court
7 to take judicial notice of the fact that al-Shabaab in
8 its various names and al-Qaeda in its various names are
9 foreign terrorist organizations designated under
10 Section 219 of the Immigration and Nationality Act.

11 THE COURT: All right. Any objection?

12 MS. MINTER: Limited to that, no objection,
13 Your Honor.

14 THE COURT: Mr. Yamamoto, no objection?

15 MR. YAMAMOTO: No, Your Honor.

16 THE COURT: All right. The Court will admit
17 Exhibits 301 and 305 and judicially notice al-Shabaab's
18 designation as a foreign terrorist organization.

19 MR. GILLIS: And al-Qaeda.

20 THE COURT: And al-Qaeda.

21 MR. GILLIS: Thank you, Your Honor.

22 Your Honor, with that the government rests.

23 THE COURT: All right. Thank you.

24 Mr. Kamens.

25 MR. KAMENS: Good afternoon, Your Honor. I

1 have a written submission I would like to hand up to
2 the Court.

3 THE CLERK: One is a copy?

4 MR. KAMENS: That's two copies. So yes.

5 Your Honor, our Rule 29 motion is based on
6 two arguments. The first is that a conviction for
7 material support depends upon proof beyond a reasonable
8 doubt of support provided to an organization. The
9 second argument is that efforts to provide medical care
10 to wounded soldiers in an armed conflict is not a
11 crime.

12 First, the Court on a Rule 29 motion must
13 consider the evidence in the light most favorable to
14 the prosecution. The evidence in this case, under that
15 standard, establishes for purposes of this motion that
16 Ms. Jama is part of the Somali diaspora; was a local
17 supporter of al-Shabaab; that she participated in a
18 chat room called ISDAC in which participants expressed
19 support for al-Shabaab; she communicated with
20 approximately 14 other women in a smaller private chat
21 room; and she invited Amina Esse in to join that group.

22 Ms. Jama, under this standard, conspired with
23 Amina Esse to send money to a woman based in Nairobi,
24 Kenya, named Fardowsa Jama Mohamed to rent a house
25 where wounded al-Shabaab soldiers were treated and to

1 pay doctors to provide care for the soldiers. They
2 also sent money for the purchase of an X-ray machine to
3 provide care to al-Shabaab soldiers who were wounded in
4 battle. Ms. Jama kept a ledger of usernames listing
5 those names of people by their username who contributed
6 money.

7 But after years of investigation, there is
8 almost no evidence about the people who received the
9 money. Government Expert Bryden described four levels
10 of people, four categories of people who could face
11 U.N. sanctions, al-Shabaab members, financiers,
12 facilitators, and active supporters. He said that
13 members were those who self-identify, who speak on
14 behalf of the organization, who are a member of the
15 armed forces -- not an aligned militia but the armed
16 forces -- of al-Shabaab, or those who have some role in
17 the organizational structure. The others, financiers,
18 facilitators, active supporters, are not necessarily
19 members.

20 With respect to Fardowsa, there's very little
21 testimony about who she is. There is no testimony that
22 she is a member of al-Shabaab, that she had a position
23 within the organizational structure, that she was under
24 the direction and control of al-Shabaab, or that she
25 identified herself as a member or representative of

1 al-Shabaab.

2 The government expert, Bryden, provided no
3 testimony about her. He did testify that a woman named
4 Barira Hassan had been mentioned in a 2013 U.N. report
5 because she was the business associate of a courier who
6 was involved with a failed suicide attack in Addis
7 Ababa. We don't know if that is the same Barira who is
8 relevant to this case. But even so, Bryden said that
9 this person would fit the category of, quote, an active
10 support if not a financier.

11 This is important because the statute
12 requires that the material support be provided to an
13 organization that is designated as a foreign terrorist
14 organization. Giving money to an independent actor who
15 is not directed or controlled by a foreign terrorist
16 organization but who independently does things that
17 benefit the FTO does not constitute material support.

18 You heard testimony in this case about
19 nongovernmental organizations like Doctors Without
20 Borders and the Red Crescent providing medical care in
21 al-Shabaab-controlled territory. You've also heard
22 that at least some medical professionals would feel
23 bound to provide care to al-Shabaab fighters because of
24 their ethical obligation to provide care regardless of
25 the individual who needs treatment.

1 The reason that these organizations and the
2 individuals who provide care are not subject and do not
3 fall within the material support statute is, as the
4 *en banc* Seventh Circuit noted, because, quote, an
5 organization like Doctors Without Borders would be
6 helping not a terrorist group but individual patients
7 consistent with the Hippocratic oath. And I quote from
8 *Boim v. Holy Land Foundation*, 549 F.3d 685 at 699, a
9 2008 *en banc* decision.

10 As the Supreme Court stated in *Holder v.*
11 *Humanitarian Law Project* at 561 U.S. 26, the material
12 support statute does not, quote, prohibit independent
13 advocacy or expression of any kind.

14 One scholar has written about this exception
15 as saying that the chief justice's carve-out from the
16 statute's coverage of independent speech activities
17 that are not coordinated with a foreign terrorist group
18 parallels the distinction in campaign finance cases
19 between independent and coordinated First Amendment
20 activities.

21 Contributions to independent actors are not
22 unlawful even if they advocate or support causes that
23 are also supported by the foreign terrorist
24 organization.

25 THE COURT: So, as I understand your

1 argument, conceding for the purposes of this motion the
2 evidence is sufficient to establish a conspiracy
3 between Jama and Esse --

4 MR. KAMENS: And Fardowsa.

5 THE COURT: -- for the purpose of sending
6 money for the purposes of renting a house, paying
7 doctors, X-ray machines, all of which would be used for
8 the treatment of al-Shabaab fighters --

9 MR. KAMENS: That's right.

10 THE COURT: -- is insufficient because
11 there's no proof that Mohamed was a member of
12 al-Shabaab?

13 MR. KAMENS: That's correct.

14 THE COURT: Is that the argument?

15 MR. KAMENS: Yes, and I think it's consistent
16 with the charge in this case. The government has
17 not --

18 THE COURT: You are not contending that
19 renting a house, paying doctors, and buying an X-ray
20 machine for al-Shabaab fighters would not constitute
21 material support were it provided to the right person?

22 MR. KAMENS: Absolutely. If it's given to
23 the organization, that is a different matter.

24 THE COURT: What about the attempt part of
25 the statute?

1 MR. KAMENS: Well, this is twofold. I think
2 that the attempt is determined by the intent of the
3 individuals. If the individuals are intending to
4 provide to someone who provides care to individual
5 soldiers, that is not an attempt to provide to the
6 organization.

7 I would also note that the charge --

8 THE COURT: Without getting to whether the
9 evidence is sufficient, but if the evidence were that
10 the moneys were given to Fardowsa with the intent that
11 they, in fact, reach these al-Shabaab fighters and --

12 MR. KAMENS: I'm sorry. Could you say that
13 again?

14 THE COURT: Yes. If the money was given to
15 Fardowsa with the intent and the expectation that the
16 moneys would, in fact, be used for these purposes,
17 would that be sufficient evidence to establish an
18 attempt?

19 MR. KAMENS: No, if Fardowsa is not a member
20 of the organization. It is as if an individual is
21 providing money to the Red Crescent knowing that the
22 Red Crescent is providing care in an
23 al-Shabaab-controlled area.

24 THE COURT: Well, what would be the
25 difference, then, between an attempt and conduct that

1 would constitute the substantive offense? The attempt
2 doesn't have to be successful.

3 MR. KAMENS: It doesn't, but if you are
4 providing to an independent -- let me get to the point.
5 It comes up in the context of providing personnel. The
6 material support statute prohibits not only providing
7 funds or tangible goods, it prohibits individuals from
8 serving as themselves or providing others to enter in
9 and come under the management and control of the
10 foreign terrorist organization.

11 And so if I assist my friend in getting on a
12 plane to go to Somalia to fight for al-Shabaab, as
13 we've had cases like that, then we are potentially
14 guilty of the offense of material support for providing
15 that person as personnel for al-Shabaab. But if you
16 have someone who provides a service to al-Shabaab
17 individually, that is not the same thing as providing
18 personnel.

19 THE COURT: What if they thought that
20 Fardowsa was the conduit to al-Shabaab?

21 MR. KAMENS: Well, I think if the intent was
22 to provide to the organization, that is a different
23 matter. I would concede that trying to give to the
24 organization, even if you are unsuccessful, then that
25 would constitute, I believe, a violation of the

1 statute.

2 But if the -- and we have another argument
3 which I will get to in a moment. But if you understand
4 this person to be an independent or someone who is
5 simply a supporter, then that is different. We heard
6 from Mr. Bryden that al-Shabaab has people who are
7 within the organization and people who were simply
8 supporters outside the organization.

9 Now, I understand that doesn't squarely
10 define the scope of what is considered a legal
11 definition of al-Shabaab for purposes of this case, but
12 it does make sense. There's an organization that has
13 been designated, and there are people who support that
14 organization.

15 It is not the same thing to provide money to
16 a person who merely supports the organization. It is
17 the same thing as if I wish to support a candidate, and
18 I'm restricted from giving money above a certain limit
19 to that candidate. But I give to an independent
20 organization that is not coordinated with the candidate
21 for the purpose of assisting that candidate. The
22 carve-out is parallel to *Citizens United*.

23 THE COURT: So where's the line between
24 giving funds to someone that you think will allow those
25 funds to ultimately benefit al-Shabaab and giving funds

1 to someone who would be, quote, an independent actor?

2 MR. KAMENS: I think the line is twofold.
3 First is that we are not at all suggesting that even
4 giving -- you can't insulate yourself from criminal
5 liability by giving money to someone who's not a member
6 but simply passes through the contribution. Just like
7 in campaign finance, you can't give to someone who's
8 not associated with the campaign who just hands over
9 the money.

10 THE COURT: Right.

11 MR. KAMENS: So one part of the line is is
12 this a scheme to simply pass the money on through? I
13 don't think that's the evidence here.

14 The second part of the line is is the person
15 under the organizational control of the foreign
16 terrorist organization? And the problem with this case
17 is that there is zero evidence that Fardowsa was under
18 the organizational control of al-Shabaab.

19 So looking to the campaign finance cases,
20 independent expenditures directed at recipients other
21 than a designated foreign terrorist organization
22 itself, as long as such contributions are not somehow
23 directed by the organization, are protected, and they
24 must be treated for constitutional purposes as an
25 independent expenditure and not an indirect

1 contribution.

2 THE COURT: What is the evidence sufficient
3 to establish as far as who would have been sufficiently
4 associated with al-Shabaab? There were a number of
5 names.

6 MR. KAMENS: Soldiers, people who are
7 publicly --

8 THE COURT: How about Sheikh --

9 MR. KAMENS: Abdulsalam?

10 THE COURT: -- Abdulsalam?

11 MR. KAMENS: Potentially. I need to review
12 that testimony, and I'll get to that exhibit. I'm only
13 going to talk about two exhibits.

14 Abdulsalam -- and I think it's Exhibit 105 --
15 refers to a contribution that is not listed as a
16 substantive count and is outside the charged
17 conspiracy. It's not charged as a substantive count.
18 It is five to ten months before the charged conspiracy.
19 But for the sake of argument, he potentially could be a
20 member of al-Shabaab and giving him money could
21 potentially violate the statute.

22 So in the larger ISDAC chat room where
23 recognized leaders come into the chat room and solicit
24 funds, people who provide money to those individuals
25 who are within the organizational structure of

1 al-Shabaab have clearly violated the statute.

2 It would have been a very easy case had these
3 people been charged with giving to leaders within the
4 organizational structure or even people that they had
5 evidence were members of al-Shabaab, but that is not
6 this case.

7 THE COURT: Just so I'm clear, your view is
8 that it's insufficient if the evidence only shows that
9 these defendants thought they were sending money to
10 somebody for the purposes of helping al-Shabaab?

11 MR. KAMENS: Of providing this particular
12 contribution, which is medical care. We say if you're
13 providing medical care, it is provided to individuals
14 on an individual basis. It is not provided to the
15 organization as a whole. Without any evidence that
16 Fardowsa was directed or controlled by the
17 organization, then necessarily the government has
18 failed to adduce proof that these people provided money
19 to the organization.

20 THE COURT: All right.

21 MR. KAMENS: The second argument is that the
22 government has not established that Ms. Jama conspired
23 to or did give material support because medicine and
24 medical care do not constitute material support.

25 To prove the substantive counts in the

1 indictment, the government must prove that each of the
2 individual payments were made to provide material
3 support to the al-Shabaab organization, as I've said.

4 But the statutory definition of material
5 support excludes medicine from its definition. There's
6 no specific testimony as to what any of these
7 individual counts are for. Of course, to obtain a
8 conviction, the government has to prove that the
9 payments were for material support, not medicine.

10 In this case, the government presented
11 testimony from Amina Esse that she and Umu Luqmaan
12 spoke in code. They used the term "living expenses" in
13 many of their communications. In fact, that term is
14 replete in the exhibits introduced by the government.

15 Ms. Esse testified that that term is code for
16 medicine for wounded al-Shabaab soldiers. So for each
17 of the individual \$50, \$100 contributions listed in the
18 substantive counts, no reasonable fact finder, based
19 upon that testimony, could conclude that these amounts
20 were not to provide medicine, which is specifically
21 excluded from the definition of material support.

22 THE COURT: How about the X-ray machine?

23 MR. KAMENS: The X-ray machine is designed to
24 provide medical care, and it relates to my second point
25 which is much broader. That is that the United

1 States -- the Court must understand -- is involved in a
2 non-international armed conflict with a nongovernmental
3 armed group, al-Shabaab. In a non-international armed
4 conflict, it is prohibited to restrict soldiers from
5 receiving medical care.

6 The government said in its opening
7 statement --

8 THE COURT: What's the source of that?

9 MR. KAMENS: I'm about to run through it.

10 THE COURT: All right.

11 MR. KAMENS: I will explain -- and it's in
12 our papers -- about why this source of law is binding
13 and can serve as a rule of decision in this case.

14 THE COURT: All right.

15 MR. KAMENS: The government said in its
16 opening statement that this small group of women sent
17 money to Fardowsa in Nairobi, Kenya, so that
18 Ms. Fardowsa could pay rent on the safe houses we've
19 discussed where she cared for wounded al-Shabaab
20 soldiers. That's what Amina Esse testified to. She
21 was told that Fardowsa rented two houses, one for
22 cooking or to store weapons and the other to treat
23 wounded fighters, and the money provided by the women
24 was so Fardowsa could rent the second house where the
25 wounded fighters were treated, to pay doctors. She

1 also testified about, as the Court just mentioned, the
2 purchase of an X-ray machine.

3 Additional Protocol II to the Geneva
4 Convention says, Under no circumstances shall any
5 person be punished for having carried out medical
6 activities compatible with medical ethics regardless of
7 the person benefiting therefrom.

8 The Department of Defense's Law of War
9 Manual, which is designed to state the international
10 law in this area, says, No one shall ever be molested
11 or convicted for having nursed the wounded or the sick.
12 For example, persons should not be prosecuted for
13 offenses of aiding the enemy because they tended to
14 wounded members of enemy military forces.

15 All of this comes from Common Article 3 of
16 the Geneva Conventions, which says, In the case of
17 armed conflict not of an international character, the
18 wounded and the sick shall be collected and cared for.
19 The commentary to this provision says that this
20 expresses a categorical imperative which cannot be
21 restricted, and it necessarily implies respecting and
22 protecting medical personnel, facilities, and
23 transports.

24 Common Article 3 is so basic that a grave
25 breach of Common Article 3 is a war crime, and it is

1 prohibited by 18 U.S.C. 2441 which specifically states
2 that grave breaches of Common Article 3 constitute a
3 war crime.

4 The Supreme Court has applied Common
5 Article 3 to vacate the conviction in a military
6 commission of an al-Qaeda member in *Hamdan v. Rumsfeld*.
7 As one law review says, The only provisions of the
8 conventions that refer explicitly to criminal
9 prosecutions are those that explicitly proscribe
10 pursuing prosecutions of those engaged in humanitarian
11 relief.

12 This means that the U.S. material support
13 laws inasmuch as they criminalize the provision of
14 specific forms of humanitarian assistance are in direct
15 conflict with the requirements of the Geneva
16 Convention.

17 THE COURT: What are you reading from?

18 MR. KAMENS: I'm reading from a law review.
19 It's *Criminalizing Humanitarian Relief: Are U.S.*
20 *Material Support for Terrorism Laws Compatible with*
21 *International Humanitarian Law?* It's 46 N.Y.U. Journal
22 of International Law & Policy 399, 2013.

23 The point is that if it is a violation of
24 international law to prohibit the provision of medical
25 care to soldiers in a non-international armed conflict,

1 then it is equally in violation of that law to prohibit
2 people from giving money to people to provide medical
3 care to soldiers in an armed conflict.

4 THE COURT: That presumes that it would --

5 MR. KAMENS: I'm about to explain why that
6 matters. I would think the Court would say who cares.

7 THE COURT: Well, the Court wouldn't say who
8 cares. The Court would say how do you reconcile --

9 MR. KAMENS: How does that matter in this
10 criminal case?

11 THE COURT: Right. When you have an
12 affirmative criminal statute that, arguably, has an
13 affirmative substantive offense, the question is how do
14 you accommodate, if at all, these international
15 prohibitions?

16 MR. KAMENS: Let me explain.

17 THE COURT: My recollection is that there's
18 the *Charming Betsey* presumption.

19 MR. KAMENS: That's one of my answers.

20 First, the material support statute was
21 enacted, according to Congress, pursuant to the define
22 and punish clause. But the define and punish clause,
23 which allows Congress to enact criminal offenses that
24 define and punish violations of the law of nations,
25 does not allow Congress to punish conduct which is not

1 a violation of customary international law, much less
2 punish conduct which international law says is not
3 subject to punishment.

4 We've cited in our papers an Eleventh Circuit
5 case which vacated a conviction because the underlying
6 conduct for a statute that was enacted under the define
7 and punish clause was not a violation of customary
8 international law.

9 Second, Common Article 3 is a binding treaty.
10 It is binding under the supremacy clause. As Judge
11 Ellis said in the *John Walker Lindh* case, which we've
12 also cited in our papers, the Geneva Conventions are
13 self-executing and can serve as a rule of decision in
14 this case.

15 To all of this, the government has one
16 response, and that is a single line in the conference
17 report that says, quote, Medicine should be understood
18 to be limited to the medicine itself and does not
19 include the vast array of medical supplies.

20 We would say a number of things, but first,
21 certainly, this conference report was not meant to
22 eliminate a basic tenet of the law of non-international
23 armed conflict.

24 Moreover, the resort to legislative history
25 is not the only rule of construction that the Court

1 should look at, as the Court mentioned. But first,
2 before you even get to rules of construction, the Court
3 must look to the plain language and the plain meaning
4 of the words in the statute, that is for words that are
5 in the statute. Some of them are defined; some of them
6 are not. For those that are not, look at the plain
7 meaning, the ordinary terms as they are defined by
8 dictionaries, for example.

9 One plain meaning of the term "medicine"
10 means the practice of medicine. In other words, the
11 science and art dealing with the maintenance of health
12 and the prevention, alleviation, or cure of disease.

13 Last, as the Court mentioned, at least in the
14 context of construing statutes that would otherwise
15 violate a basic tenet of international law. The court
16 has said in the case called *Charming Betsey* that,
17 quote, An act of Congress ought never to be construed
18 to violate the law of nations if any other possible
19 construction remains.

20 THE COURT: That contemplates an ambiguity in
21 the criminal statute; doesn't it?

22 MR. KAMENS: I think it contemplates a
23 potential ambiguity and a conflict with international
24 law. In this case, the ambiguity could come from the
25 fact that the word "medicine" is not defined in the

1 statute. There are two equally plausible definitions
2 of that term. One is the individual pills that are
3 provided by prescription drug companies, and the other
4 is a broader term referring to providing medical care.

5 Certainly, in the context of a
6 non-international armed conflict or an armed conflict
7 of any type, construing a statute in that context to be
8 consistent with Common Article 3 and the other
9 provisions of international law which, as we've cited
10 in our papers, are very basic, considered customary
11 norms of international law, that in the context of
12 armed conflict, the parties cannot restrict the ability
13 of the other side's soldiers to receive medical care.
14 It is one of the initial tenets of the Geneva
15 Convention from 1864. It is in the Lieber Code. If
16 you have a U.S. military soldier who has custody of a
17 wounded al-Shabaab soldier, he must provide care. That
18 is the requirement of the law.

19 In conclusion, after years of investigation,
20 surveillance, millions of dollars, the government has
21 uncovered a conspiracy to provide medical care to
22 wounded al-Shabaab soldiers.

23 Now, it is certainly true that the government
24 can point to individual calls, for example, the call in
25 Exhibit 105 that I mentioned earlier. But that

1 certainly does not prove the conspiracy. It is outside
2 of the time period of the conspiracy, and the words
3 themselves are important in Government Exhibit 105. In
4 that call, a woman who is identified as Ms. Jama says,
5 Sister, the money I sent before -- God knows if they
6 were monitoring me -- to Sheikh Jama Abdulsalam and
7 other brothers.

8 Question: When did you send it? This year?

9 Answer: No. Two years ago.

10 As you can see from Government Exhibit 105,
11 those transfers occurred in 2010. This suggests two
12 things:

13 First, the other participant of the call, who
14 is identified as Fardowsa Jama Mohamed, the linchpin to
15 the conspiracy in this case, was not involved in those
16 transfers. She does not know about them. She asks
17 about them: When were they sent?

18 The second is that the clear inference is
19 that the person who is identified as Ms. Jama has not
20 sent money to the, quote, brothers, since 2010. As I
21 said, this is not alleged as a substantive count. It
22 is outside the scope of the conspiracy.

23 THE COURT: What's the statute of
24 limitations? Is it five years?

25 MR. KAMENS: I think it's ten.

1 So it is not a part of this case. We don't
2 know, for example, in 2010, if the government has any
3 transcripts, if they could bring a charge, if they
4 could establish that Ms. Jama knew that al-Shabaab --
5 which had been recently designated as a terrorist
6 group -- whether that knowledge was possessed by her at
7 that time. What we know is in this case, it is not
8 charged either as part of the conspiracy or as a
9 substantive count.

10 THE COURT: What about the argument, I
11 suspect I'll hear, that irrespective of what the
12 evidence is as to the specific payments, the evidence
13 is sufficient to establish a conspiracy broader than
14 those particular payments, that it was a conspiracy to
15 provide material aid more generally than what the
16 evidence shows the specific payments, in fact, were?

17 MR. KAMENS: There is very little evidence to
18 suggest that the government knows what the payments
19 were for. What they have are a bunch of calls that
20 refer primarily to something like living expenses,
21 which we know is code for medical care or medicine for
22 soldiers.

23 THE COURT: There is evidence they spoke in
24 much broader terms, such as helping our brothers in the
25 mountains which refers to helping al-Shabaab generally

1 or arguably does.

2 MR. KAMENS: Well, there are also calls --
3 and we can lay this out -- that talk about providing
4 living expenses to the north, providing living expenses
5 to the brothers in the mountains.

6 THE COURT: Right.

7 MR. KAMENS: The term is used throughout the
8 calls. So if the government were to shift course at
9 this point and say, well, we're going to concede that
10 living expenses, medicine, may be outside the scope of
11 the statute, it would be difficult for them to
12 establish the conspiracy as they've set it out.

13 I'd point to, for example, Government
14 Exhibit 46, which is, I think, one of their principal
15 pieces of evidence. There is certainly the reference
16 to living expenses where they refer to, I sent it on
17 the 20th last month also, living expenses.

18 They matched Government Exhibit 46 to a
19 transfer to Fardowsa from the previous month. It shows
20 that living expenses were sent.

21 Later on in Government Exhibit 46 there is
22 the statement which the government has emphasized,
23 which the person who is identified as Umu Luqmaan says,
24 Every family that believes in Tawhid must pay at least
25 \$150, \$50 for the orphan, \$50 for the wounded, \$50 for

1 the people in the mountains. I would have divided it
2 that way.

3 So this itself provides a statement of how
4 Ms. Jama would have divided the money. It is not a
5 statement about any of the particular substantive
6 counts, and it is not a statement about the agreement,
7 the meeting of the minds, amongst the so-called
8 conspirators in this case, which was to provide living
9 expenses, as far as we know, to a woman named Fardowsa
10 Jama Mohamed. Those living expenses, we know, are code
11 for medicine for wounded al-Shabaab soldiers.

12 Because the participants in a
13 non-international armed conflict cannot restrict the
14 access to medical care for the enemy soldiers, this
15 Court should enter a judgment of acquittal on all
16 counts.

17 THE COURT: All right. Thank you.

18 Mr. Yamamoto or Ms. Deutsch.

19 MR. YAMAMOTO: Your Honor, we'd just join
20 Ms. Jama's motion.

21 THE COURT: All right. Ms. Atiyeh.

22 MS. ATIYEH: Thank you, Your Honor.

23 THE COURT: Yes.

24 MS. ATIYEH: Ms. Jama didn't provide medicine
25 to Fardowsa Jama Mohamed. She didn't provide medical

1 care to Fardowsa Jama Mohamed. She wasn't nursing the
2 wounded. Ms. Jama and Ms. Dhirane provided money to
3 Fardowsa Jama Mohamed, and the case law is, frankly
4 unequivocal, Your Honor.

5 THE COURT: So is it your position that the
6 purpose of the money is irrelevant?

7 MS. ATIYEH: Yes, Your Honor. I think that
8 the Supreme Court's holdings in *Holder* bear that out
9 and *Humanitarian Law Project*. The statute makes very
10 clear -- and I don't want to read law quotes to Your
11 Honor -- money is fungible, and when foreign terrorist
12 organizations that have a dual structure raise funds,
13 they highlight the civilian --

14 THE INTERPRETER: Excuse me.

15 MS. ATIYEH: Oh, I'm so sorry.

16 -- and when foreign terrorist organizations
17 that have a dual structure raise funds, they highlight
18 the civilian and humanitarian ends to which such moneys
19 could be put. But there is reason to believe that
20 foreign terrorist organizations do not maintain
21 legitimate financial firewalls between those funds
22 raised for civil, nonviolent activities, and those
23 ultimately used to support violent, terrorist
24 operations. That's at page 31 of that case.

25 THE COURT: No. I understand. It's material

1 support regardless of what the money is used for
2 subject to these arguments I'm hearing. It doesn't
3 matter if they're using it to feed children or build
4 schools because that would be moneys that they
5 otherwise would redirect towards terrorist activities.

6 MS. ATIYEH: That's correct. That's the
7 plain meaning of the statute as well. I mean, when the
8 statute makes these exceptions for medicine and
9 religious materials, it's not making an exception for
10 money for medicine and religious materials. It's
11 making an exception for those specific humanitarian
12 ends.

13 THE COURT: Oh, I understand.

14 MS. ATIYEH: I think that Mr. Kamens was
15 making something of a nuanced argument with regard to
16 that point, which is that the money sent for medical
17 purposes to Fardowsa Jama Mohamed isn't to al-Shabaab
18 for the purposes of that sort of *Holder v. Humanitarian*
19 *Law Project* concept because it was to an individual
20 rather than to the organization.

21 To that, Your Honor, I would just say,
22 ultimately, all money that's being sent to a foreign
23 terrorist organization must be directed to an
24 individual. There's not an al-Shabaab fundraising
25 account somewhere that one can send money to.

1 THE COURT: What is the evidence concerning
2 who Fardowsa Jama Mohamed is or was in terms of
3 relationship to al-Shabaab?

4 MS. ATIYEH: Well, Your Honor, the evidence
5 is --

6 THE COURT: She was obviously a sympathizer.

7 MS. ATIYEH: She was obviously a sympathizer.

8 So the first thing we have is the testimony
9 of Amina Esse herself, which was that the monthly
10 payments to Fardowsa Jama Mohamed were to run two safe
11 houses, the one for wounded al-Shabaab fighters to go
12 for treatment, which is what we've been discussing, and
13 also the second safe house, which she said was to store
14 weapons and ammunition where al-Shabaab soldiers would
15 go get ready to fight. She also said that was for
16 cooking. I don't know that those two statements are
17 actually, in fact, inconsistent with one another.

18 Then that testimony from Ms. Esse is
19 bolstered by Government's Exhibit 44, which is the
20 conversation where Ms. Jama says to Ms. Dhirane that
21 Umu Camaar rents homes run by infidels; two homes are
22 rented; she receives \$600 a month in support of that
23 rent, which corroborates Ms. Esse's testimony that
24 there were, in fact, two safe houses for al-Shabaab
25 being run by Fardowsa Jama Mohamed.

1 We also have the additional comments by
2 Ms. Jama that the money is intended for the brothers in
3 the mountains, that \$50 should go to the brothers in
4 the mountains.

5 We've heard substantial testimony, both from
6 Ms. Esse and from Mr. Bryden, that when the defendants
7 are referring to brothers in the mountains in this
8 context, they are, in fact, referring to al-Shabaab.

9 THE COURT: All right.

10 MS. ATIYEH: To be clear, Your Honor, that's
11 also just limiting the conspiracy to only the money
12 being sent to Fardowsa Jama Mohamed and only the money
13 being sent for the first of the two safe houses.

14 Ms. Jama is also charged with sending money
15 to her father intended for Barira Hassan Abdullahi, who
16 Mr. Bryden testified was an al-Shabaab facilitator in
17 the region who, essentially, leads the fundraising
18 campaigns for al-Shabaab soldiers in the area.

19 It's also supported by the conversations
20 about the Somali -- or I guess it was the Puntland
21 government's capture of the truck full of supplies
22 intended for al-Shabaab. We've seen Government's
23 Exhibit 100, Ms. Dhirane discussing with Khuluud or
24 Ismahaan Cabdi Cilmi the incident about the truck
25 capture. Then we later see in Government's Exhibit 102

1 essentially a confirmation where the women are saying,
2 Yes, the vehicle was ours.

3 Your Honor, I don't want to go into
4 considerable detail about the additional transactions
5 that we talked about that Mr. Kamens argued was outside
6 the scope of the conspiracy with the funds sent to Jama
7 Abdulsalam, the funds sent to Bashir Gelle who
8 Mr. Bryden testified was an al-Shabaab fundraiser who
9 raised in the ISDAC chat rooms, the funds Ms. Dhirane
10 sent to Xawo Kiin Raage who, again, Mr. Bryden
11 testified was an al-Shabaab facilitator, a fundraiser
12 who raised money in the ISDAC chat rooms. I think
13 those transactions largely speak for themselves.

14 I think there is significant evidence in this
15 case that the money going to what both of the
16 defendants described as the Nairobi side and the money
17 going to what the defendants described as the Hargeysa
18 side was intended for al-Shabaab and was, in fact, for
19 the benefit of al-Shabaab.

20 THE COURT: All right.

21 MS. ATIYEH: Your Honor, if I may very
22 briefly respond to Mr. Kamens' Geneva Conventions
23 arguments.

24 THE COURT: Yes.

25 MS. ATIYEH: Your Honor, this is --

1 THE COURT: I don't know if you've become
2 familiar with those or not before --

3 MS. ATIYEH: I'm relatively familiar with
4 them. We can certainly offer briefing to the Court
5 later. I think there's abundant writing at the
6 district court level, at least, and possibly some of
7 the appellate court level that we can get for Your
8 Honor.

9 THE COURT: All right.

10 MS. ATIYEH: Certainly, there has been some
11 ruling in the district court in Richmond that to the
12 extent that the Geneva Convention relies on the Laws of
13 War, it doesn't apply to al-Shabaab because al-Shabaab
14 is like al-Qaeda, an unconventional, unformed guerrilla
15 armed force that's not under the control of any
16 recognized government. It's not engaged in an armed
17 conflict within the meanings of the Geneva Convention.

18 THE COURT: Which judge?

19 MS. ATIYEH: That was Judge Hudson, I
20 believe.

21 THE COURT: In a material support case?

22 MS. ATIYEH: That was a material support
23 case.

24 Your Honor, I'm not familiar enough with the
25 ruling to be able to argue it thoroughly, but we can

1 certainly provide you further briefing if that's
2 necessary.

3 THE COURT: All right.

4 MR. KAMENS: Your Honor, I am familiar with
5 that case. I'm involved in that case. It has nothing
6 to do with this case, and I'll explain why. In that
7 case, a defendant, our client, sought to assert
8 prisoner of war combatant immunity. Combatant immunity
9 is only available to prisoners of war in an
10 international armed conflict -- so not
11 non-international armed conflicts -- international
12 armed conflicts between states. If you're in a
13 non-international armed conflict, you have no POW
14 immunity.

15 So in that case, the court didn't rule on the
16 question of whether there was an international armed
17 conflict in Afghanistan, denied prisoner of war
18 combatant immunity because of the lack of the uniform
19 and the violations of the Laws of War by the Taliban.
20 It has nothing to do with a non-international armed
21 conflict which does encompass non-state actors like
22 al-Qaeda and like al-Shabaab.

23 That is the import of the ruling, for
24 example, in *Hamdan v. Rumsfeld* in which a person
25 affiliated with al-Qaeda, Mr. Hamdan, a former driver

1 of Osama bin Laden, picked up in Afghanistan. The
2 court had to determine not whether he was a POW, was
3 entitled to combatant immunity under Geneva IV, the
4 fourth Geneva Convention, but whether he was entitled
5 to the benefits of Common Article 3 which is in all
6 four Geneva Conventions and applies in a
7 non-international armed conflict like this one. We're
8 asking for the same article applied by the Supreme
9 Court in that case to apply in this case.

10 As I mentioned, it applies for a number of
11 reasons: One, because of the enumerated power under
12 which material support was enacted; two, because it is
13 a binding treaty, as Judge Ellis -- he was referring to
14 Geneva IV, but it would apply equally to Common
15 Article 3; and third, because it can be used as a tool
16 of statutory construction.

17 If I can respond briefly to the points that
18 Ms. Atiyeh made.

19 THE COURT: Before you do that, have any
20 courts squarely dealt with this issue?

21 MR. KAMENS: With respect to Common Article 3
22 or with --

23 THE COURT: Yes.

24 MR. KAMENS: I would suggest that the Court
25 look at *Hamdan*.

1 THE COURT: No. I mean in terms of the
2 material aid to terrorism specifically with respect to
3 this kind of a case.

4 MR. KAMENS: Well, let's see. Whether an
5 individual can use international law as a defense in a
6 criminal case?

7 THE COURT: Yes. Well, as a defense to a
8 charge in material aid to terrorism case where the aid
9 presumably -- not conceding that the evidence is
10 limited to that -- but the evidence would show that it
11 was for medicine.

12 MR. KAMENS: This has not been raised.

13 The issue of medicine has been raised in one
14 case in the Second Circuit where, I believe, the
15 defendant was a doctor who wanted to offer his services
16 to al-Qaeda. The Second Circuit -- and we can provide
17 the cite; it's *United States v. Farhane* -- says no.
18 This statute says in its conference report that
19 medicine is limited to pills. So it doesn't apply to
20 medical treatment.

21 In the district court case in that case, the
22 defendant said, Well, what about Doctors Without
23 Borders? What about an organization that provides
24 medical care? The government said that is not material
25 support because they are independent and they're not

1 controlled by the organization; whereas someone who
2 offers himself as a doctor to serve in al-Qaeda is
3 within the organizational structure.

4 So we would suggest that not only was that
5 court wrong in the context of its statutory limitation
6 based on the conference report, but secondly, that it
7 affirms, at least at the district court level, that if
8 you were providing medical care by someone who was not
9 within the structural organization, that that is not
10 something that violates the statute.

11 Ms. Atiyeh's first argument was about *Holder*,
12 and I would say two things:

13 First, *Holder* was limited and expressly
14 limited to the activities that were at issue in *Holder*.
15 It says that the opinion is limited to the particular
16 activities the plaintiffs have told the court they wish
17 to pursue. The opinion did not address the resolution
18 of more difficult cases that may arise in the future.
19 That is on the first page of the opinion.

20 In the context of the opinion is
21 organizations that wish to provide services, mostly
22 advocacy and legal services, to organizations
23 themselves. The premise of *Holder* and its fungibility
24 analysis is that the service is being provided to the
25 organization directly. In that context, the court

1 said, Well, if you're giving resources to the
2 organization, even if they're benign, that allows the
3 organization to use resources that it would otherwise
4 have to devote to that area to something else. So the
5 premise is that you're giving it to the organization.

6 It does not apply when the service is not
7 provided to the organization, such as the Red Crescent
8 or Doctors Without Borders. They are providing care to
9 individuals, not to the organization. Even if they
10 provide care for wounded soldiers, that allows the
11 organization to divert resources elsewhere. *Holder*
12 does not apply, and its fungibility analysis does not
13 apply because those providers are not within the
14 organization.

15 Ms. Atiyeh also pointed to two facts:

16 First, that Ms. Esse said there were two safe
17 houses. She stated that the money was provided for
18 both safe houses, the first where weapons were stored
19 or where cooking occurred and the second where medicine
20 was provided and medical care and doctors were brought.

21 Now, of course, this was very important
22 testimony to the defense. On cross-examination, the
23 testimony was very clear that Ms. Esse said the purpose
24 of providing these funds was solely for the second
25 house where medical care was provided.

1 You know what? That is exactly the same
2 statement that Ms. Atiyeh made in opening statement.
3 Do you know why she made that? Because the previous
4 statements by Ms. Esse said that this money was just
5 for the second safe house. So the testimony before the
6 Court on cross-examination was absolutely clear that
7 the money was just for medical care, and there was no
8 redirect by the government. They let it go.

9 The second thing she said was that there's a
10 lot of testimony about providing money for brothers in
11 the mountains. Again, there are calls where they talk
12 about providing living expenses for the brothers in the
13 mountains. As we know from the only person who has
14 testified who was in on that code, living expenses
15 means medicine for wounded al-Shabaab soldiers.

16 THE COURT: Who said that?

17 MR. KAMENS: Esse, and I can find it, Your
18 Honor. Obviously, this was very important to us. It
19 was adduced by Mr. Gillis right before the first break
20 on the first day that Ms. Esse testified. Quote,
21 living expense was code for medicine for the wounded
22 al-Shabaab soldiers.

23 Ms. Atiyeh also mentioned Government
24 Exhibit 100 where they talk about a truck, and they say
25 that was one of ours or one of our trucks. I would say

1 two things; although, we can flesh this out in greater
2 detail:

3 First, the reference there is as if they were
4 referring to a team, as if they were referring to one
5 of ours like we would say for one of our American
6 soldier's trucks: That's one of ours. They did not
7 state that in the context as if they had provided
8 funding for that truck.

9 Secondly, I would say on this evidence, there
10 is absolutely nothing before the Court to suggest that
11 any financial transactions or any conspiracy related to
12 the funding for trucks. It is an offhand statement in
13 one call referring to a news report. It does not
14 define what constituted the meeting of the minds among
15 the defendants. The meeting of the minds between,
16 supposedly, Ms. Jama, Ms. Fardowsa, and Ms. Esse was to
17 provide medical care.

18 THE COURT: All right. Thank you.

19 The Court is going to reserve on the motion
20 pending completion of the evidence and the briefing
21 that I would like to have filed.

22 All right. So we'll start Monday morning.

23 MS. MINTER: Very well, Your Honor.

24 At 9:00 a.m.?

25 THE COURT: Yes.

1 How long do you anticipate your witness to
2 take?

3 MS. MINTER: Your Honor, I expect our
4 evidence will be in within the morning. I don't
5 anticipate them being -- one witness. Our expert will
6 certainly be longer, Your Honor, but I don't think he
7 will be tremendously long. I certainly don't expect
8 his testimony to be as long as Mr. Bryden's, for
9 example.

10 THE COURT: All right. Mr. Yamamoto,
11 Ms. Deutsch, do you anticipate any --

12 MR. YAMAMOTO: No. We are going to move some
13 documents, but that's it.

14 THE COURT: Ms. Atiyeh, Mr. Gillis, are you
15 anticipating any rebuttal? I know you're going to want
16 to wait and hear what you hear but --

17 MR. GILLIS: I don't expect to, Your Honor,
18 depending on what their expert may have to say.

19 THE COURT: All right. Very good.

20 We'll adjourn until Monday morning at 9:00.

21 -----
Time: 2:27 p.m.

23 I certify that the foregoing is a true and accurate transcription of my stenographic notes.

25 /s/
Rhonda F. Montgomery, CCR, RPR